

RESOURCE MANAGEMENT ACT 1991

**DECISION OF THE HURUNUI DISTRICT COUNCIL
ON A RESOURCE CONSENT APPLICATION**

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| APPLICATION REFERENCE: | RC210098 |
| APPLICANT: | Hanmer Springs Thermal Pools and Spa |
| SITE ADDRESS: | 54 Lucas Lane, Hanmer Springs |
| LEGAL DESCRIPTION: | N3201 GAZ 81-2429 RES 3661 3802 HANMER PLAINS RES BLKS I II LYNDON SD – CONICAL HILL |
| PROPOSAL: | To install and operate a gravity-based recreation activity (Flyride) on the western face of the Conical Hill Reserve |
| ZONING: | Open Space |
| TYPE OF ACTIVITY: | Land Use |
| DATE OF HEARING | 7 th and 8 th October 2021 |
| COMMISSIONER | Dean Chrystal |
| APPEARANCES | <u>Applicant</u> Ms J Appleyard, Counsel for the Applicant Mr G Abbot, Applicant Mr S de Verteuil, Traffic Engineer Dr J Trevathan, Acoustic Consultant Mr R Greenaway, Recreational Consultant Dr M Tocher, Ecologist Mr N Broerse, Veterinarian Ms J Whyte, Planning Consultant <u>Council</u> Ms K Bewley, Senior Planner Mr D Smith, Traffic Engineer Mr G Walton, Acoustic Consultant |

Submitters

Mr S Pawson

Mr J Fletcher on behalf of Positive Progress Hanmer Springs

Mr and Mrs S Langford

Mr P and Mrs M Corbishley

Ms P Sargisson

Mr R Carter

Ms J Wardle and Ms J Weaver on behalf of Hanmer Horse Riders Inc

Mrs J and Mr N Rogers

Mr G Martin

Mr W Smith

Mr G Cleary, Legal Counsel for Friends of Conical Hill

Mr R Edwards, Traffic Engineer for Friends of Conical Hill

Ms V Barker, Planning Consultant for Friends of Conical Hill

Ms E Bermingham

Dr A Bower

DECISION:

Approved

INTRODUCTION

1. I was appointed by the Hurunui District Council to consider and make a decision on a land use application lodged by Hanmer Springs Thermal Pools and Spa (HSTPS) (the Applicant) to install and operate a gravity-based recreation activity (Flyride) on the western face of the Conical Hill Reserve in Hanmer.
2. The proposed Flyride site would be located on Conical Hill beginning near the existing Lookout and traversing down the western side of the hill via a number of switchbacks to finish at a stop station above Oregon Heights.
3. The Flyride will consist of a 500m cable track system, which will be constructed on seven poles situated along the route. The ride experience is provided by suspended trolleys which hang from the cable track. The Flyride will change direction at each of the seven poles which will also provide tension and anchoring for the ride. The proposal will include two platforms being the start and stop stations that will provide for rider access and egress. An accessible toilet is also proposed to be located at the start station.
4. Access to the proposed Flyride would be via the existing pedestrian tracks to the top of Conical Hill, primarily the main track leading off Conical Hill Road. No customer car access is proposed to any part of the site, nor is any new carparking proposed.
5. The Flyride will have potential for three different ride speeds with the fastest taking approximately 70 seconds and the slowest approximately 120 seconds. The proposed level of activity is based on a target of 50-60 passengers per hour with the hours of operation consisting of core hours between 10am to 6pm, 7 days a week, with the opportunity to extend these hours during summer with a potential to start at 9am and finish at 7pm.
6. The wider Conical Hill location consists of a variety of walkways, mountain bike and horse trails, forestry and the Conical Hill Lookout and plaque which are identified as historic heritage items in the Hurunui District Plan (District Plan).
7. To the south of the Conical Hill stretches the urban area of Hanmer. The closest residential properties to the proposal itself are those located at the top of Oregon Heights. Access to the walkway leading to the Flyride can be obtained from the end of Conical Hill Road and Acheron Heights.
8. All roads in the vicinity of the application site are local roads with varying road widths.

9. Through the application process the Flyride proposal has evolved and been amended. As a result, the application was publicly notified for the second time on the 8th of July 2021. A total of 55 submissions were received, 39 submissions were in opposition to the proposal and 13 submissions in support of the proposal. One submission supported the application in part, one submission opposed the application in part and one submission was neutral.

10. Key issues raised by submitters were:

Those in support or neutral:

- Will bring value and benefits to the Hanmer Springs community and the Hurunui District
- Will add to the experience of visitors in conjunction with the walk, lookout and views
- Adds and enhances diversity to the activities currently in Hanmer
- Forested character of Conical Hill will remain and replanting of natives will occur
- This type of outdoor activity goes hand-in-hand with the area's signature forest walks, bike tracks and thermal pools for well being
- Will help promote Hanmer Springs as a fun, healthy and interactive place to visit

Submissions in opposition to the proposal raised concerns about:

- Visual effects and landscape character
- Impacts on amenity values
- Parking and traffic congestion
- Increased noise
- Impacts on recreation character
- Impacts on biodiversity, in particular the native NZ Falcon/Kārearea and a range of geckos and the Canterbury Grass skink
- The risk of fire
- The impact on horse trails
- The risk of natural hazards
- Property devaluation

11. A section 42A of Resource Management Act (the Act or the RMA) report was prepared by Ms Kelsey Bewley for the Council analysing the resource management

issues associated with the application, including addressing submissions. Ms Bewley was at the time unable to provide an overall conclusion of the effects of the proposal and whether it was contrary to the objectives and policies of the District Plan due to what she considered was insufficient information. This is addressed in more detail below.

DISTRICT PLAN PROVISIONS

12. The site is zoned Open Space within the District Plan. The proposal does not comply with a series of provisions which were detail in Ms Bewley's report in paragraphs 30-41. She advised that the proposal was to be considered as a **discretionary activity** in accordance with rules 4.22, 8.4.5 and 15.4.5.1 of the District Plan. This was uncontested.
13. Key provisions against which consent was required included height of the poles, noise, and car parking.

SECTION 42A REPORT

14. The Section 42A report prepared by Ms Bewley was informed by a traffic review by Mr Smith and an acoustic review by Mr Walton.
15. Mr Smith conclusions were that traffic effects associated with the proposal were acceptable subject to the following matters being addressed through conditions:
 - a. Monitoring of on street parking associated with the Flyride activity to be undertaken by an independent suitably qualified transportation engineer before the attraction opens (as a baseline) and twice annually for two years after opening, and to coincide with a school or public holiday weekend.
 - b. Monitoring should extend to the extent of parking associated with the activity on Acheron Heights.
 - c. A formal crossing facility should be installed to provide for safe pedestrian movement across Conical Hill Road on the south side of Thomas Hanmer Drive.
 - d. That pedestrian improvements to the Conical Hill access (programmed to be delivered by Council in 2021/22 financial year) be completed prior to the Flyride activity being open to the public which will improve the safety and accessibility of Conical Hill for pedestrians.

- e. That a Wayfinding Plan be prepared including signage to encourage the use of the Conical Hill access for Flyride activity visitors, coupled with signage to discourage the use of private accessways, Lucas Lane and Acheron Heights.
16. Mr Walton agreed that the District Plan noise limits were not suitable to adequately assess potential noise effects from the activity. He noted that even with the application of an adjustment to account for special audible characteristics, the hourly averaging of noise to assess against the 55 dB $L_{Aeq(1hr)}$ noise limit would not represent the impulsive peaks in noise from the activity. Mr Walton agreed that 45 dB L_{AFmax} was an appropriate guideline to evaluate noise effects from the activity and noted the assessment did not propose this as an absolute noise limit on the activity but instead, was intended to represent the 'tipping point' beyond which adverse noise effects may become apparent.
 17. Mr Walton considered that 'vocalisations' (referred to as screams, shouts etc) of users of the ride will be the dominant noise source and that the level assumed in the AES calculations seemed suitably conservative (i.e., is at the upper-end of what might be expected). Mr Walton stated that noise effects will be determined by how frequently high-level vocalisation events occurred but considered that noise effects were unlikely to exceed the 'minor' threshold at the closest dwellings and that there would be a less than minor effect overall.
 18. Mr Walton accepted that the system-generated noise from the ride itself would be minimal and would have a less than minor noise effect. He also in terms of vehicle parking considered that with the likely spatial distribution of parking, it was unlikely that sufficient additional noise would be produced that would exceed any common noise level guidance.
 19. In her Section 42A report Ms Bewley identified the relevance effects of the proposal and reached the following conclusions:
 - *Visual effects and landscape character* - The proposal will result in the addition of built form on Conical Hill Reserve and associated visual effects, however she considered that overall, given the design of the proposal, it would not be out of character with the surrounding environment and the existing and proposed revegetation would further mitigate any actual and potential visual effects of the proposal.

- *Amenity values* - That any effects, in terms of loss of privacy on surrounding dwellings would be mitigated by the setback distance of T7 and the stop station and the provision of screening.
- *Noise* - Given the conclusions of the acoustic experts, and with the imposition of a review condition in relation to noise, she was satisfied that any actual and potential effects in relation to noise would be adequately mitigated, except for the uncertainty of noise effects on horses.
- *Traffic and parking* – Relying on Mr Smith’s assessment, she considered that subject to imposition of conditions, that any actual or potential effects in terms of transportation would be adequately mitigated.
- *Recreation character* – She agreed that the Flyride was unlikely to dominate the experience on Conical Hill and that the amenity values and recreation character of the site will be maintained.
- *Ecological Effects* – That any adverse effects on the gecko and skink habitat would occur during the construction phase and that any actual or potential effects were most appropriately addressed and managed under the Wildlife Act 1953. She accepted however that it was appropriate to link the resource consent with the Wildlife Act requirement by imposing conditions of consent which ensured appropriate action was taken to ensure the protect on geckos and skinks.

In terms of the effects of the NZ Falcon/Kārearea, she did not consider sufficient information had been provided and had been unable to reach a conclusion on this issue.

- *Fire risk* – While she considered that fire risk would largely be addressed through the building consent process, she agreed with Fire Emergency New Zealand (FENZ) that a requirement for an emergency operations procedure be in place prior to the activity being opened for the public and considered that this should be drafted in consultation with FENZ.
- *Natural Hazard risk* – She considered that any actual or potential effects in relation to natural hazard risk could be appropriately mitigated and managed.

- *Positive effects* – The positive effects included the unique nature of the proposal (the first in NZ), increased employment, economic benefit to the community and district and increased diversity of activities in Hanmer.
20. Ms Bewley considered a number of other matters of relevance to the proposal. In terms of alternative locations, she noted that Schedule 4 required an assessment where the activity was likely to result in any significant adverse effects and that as a result of the issues raised in terms of lack of information on the effects on the NZ Falcon/Kārearea and noise effects on horses using the existing adjacent track she was unable to reach a conclusion on whether there were significant adverse effects.
 21. On the matter of precedent Ms Bewley referred to the High Court in *Rodney District Council vs Gould*, which concluded that concerns relating to precedent effects are not mandatory considerations, but a matter that decision makers *may have regard to*, depending on the facts of a particular case.
 22. Ms Bewley addressed the access issue associated with 34 Acheron Heights and noted that Mr Smith considered that Flyride customers would use the main entrance from Conical Hill Road as it was a more direct route and that pedestrian volumes through the Acheron Heights access were unlikely to increase significantly but that this could be reinforced through wayfinding encouraging the use of the Conical Hill Road access. She also referred to Mr Waltons view that there would be little total noise increase at this access.
 23. In terms of the objectives and policies Ms Bewley detailed several provisions from the District Plan. She considered that overall, the majority of the proposal was generally in accordance with the relevant objectives and policies of the District Plan. However, she said she was unable to reach a conclusion on specific provisions in Chapters 4 and 13 due to the lack of information on effects relating to horses and the NZ Falcon/Kārearea.
 24. Of the other relevant planning documents Ms Bewley referred to the Canterbury Regional Policy Statement (CRPS) concluding that she was unable to assess the proposal against the relevant objectives and policies of Chapter 9 due to the effects on NZ Falcon/Kārearea being unable to be adequately assessed.
 25. Ms Bewley also referred to the Reserves Act and Reserve Management Plan (RMP) noting that the RMP did not specifically allow for commercial activities on Conical

Hill. Therefore, the RMP would have to be amended to provide for the Flyride activity or the Flyride would need to be licensed by Council under the Reserves Act. She did agree that the proposal would be consistent with the RMP, provided a licence is provided under the Reserves Act for the activity and a lease is provided for the associated buildings.

SITE VISIT

26. Prior to the beginning of the hearing, I undertook a site visit accompanied by Mr Ben Smith from HSTPS for part of that visit. I walked the main Conical Hill track and the Lucas Lane track utilised by horse riders, I viewed the location of both the start and stop station and I visited residential properties in Oregon Heights, Conical Hill Road and Acheron Heights.

HEARING

Applicant

27. Ms Appleyard said that the case for HSTPS was:
- Tourism and recreation are integral to providing for the social and economic wellbeing of people and communities in the Hurunui District, the region, and the nation generally.
 - Hanmer Springs is an internationally renowned tourist destination, known mostly for the thermal pools complex operated by HSTPS. However, there is a distinct lack in current offering of paid activities in Hanmer Springs, particularly in the \$15 to \$100 price bracket.
 - Tourism destinations need to expand and upgrade to remain competitive.
 - The adverse effects of the proposal are avoided, remedied or mitigated and the imposition of conditions of consent will ensure effects are no more than minor.
 - As well as enhancing recreational offering, the proposal will enhance native revegetation on Conical Hill, and improve the management of lizards through the implementation of a comprehensive lizard management plan.
28. Ms Appleyard said that in addition to the Application there are two further statutory approvals required for the Flyride which require separate processes under other

legislation and do not form part of the hearing process. The first of these was from the Department of Conservation (DoC) under the Wildlife Act 1953 to install and operate the Flyride because there were four lizard species, which are afforded absolute protection under the Act, known to reside on Conical Hill. She noted that a Lizard Management Plan (LMP) had been prepared in consultation with DoC which documented the lizard values within the project footprint and the actual and potential effects of works to construct and operate the Flyride on lizard values. She said the Applicant had offered a resource consent condition requiring a permit be obtained from DoC prior to construction.

29. The second process was that Conical Hill Reserve is held under the Reserves Act 1977 and HSTPS will need to seek a lease from the Council to undertake the activity under s54 of that Act.
30. Ms Appleyard submitted that there were significant economic, social and recreational benefits associated with the proposed Flyride. She also noted HSTPS continued to contribute to the local communities, including hosting schools, sponsoring sports teams, and supporting a number of large events in the village.
31. Ms Appleyard informed that in mid-2019 HSTPS had applied for funding from the Provincial Growth Fund (PGF) and that the Hurunui District Council was granted \$2.2 million from the PGF for the construction of a downhill amusement ride on Conical Hill. Ms Appleyard submitted that this was a clear indication from the Government that this proposal is valuable and necessary to support the domestic tourism market.
32. Ms Appleyard submitted that HSTPS had taken all steps practicable to minimise the impact of the Flyride on the environment and to the degree that this was not achievable it had offered a number of conditions of consent to ensure effects did not adversely impact the surrounding environment.
33. In addressing the precedent effect, Ms Appleyard said that importantly, in order to create a precedent from the grant of a resource consent, you must have a situation of "like for like"¹. She noted that the highly specific and unique nature of this proposal for a gravity-based recreation activity within Conical Hill Reserve, meant that the

¹ Dye v Auckland RC [2002] 1 NZLR 337 (CA) at [49]

chances that there would be another future proposal similar to this one within the same area was highly unlikely and, she submitted, was fanciful.

34. In reference to Part 2 of the Act, Ms Appleyard submitted that in this case, the relevant planning documents had been prepared in accordance with Part 2 of the RMA and consideration against those relevant plans was therefore the primary framework for assessing the Application.
35. Mr Abbot provided evidence on behalf of HSTPS. He stated that due to the effects of COVID-19 it was critical for tourism destinations such as Hanmer Springs to 'expand and improve their activity offering in order to remain competitive'. Mr Abbot confirmed a commitment to provide a safe, fun, accessible and environmentally sympathetic experience for all people. He referred to the use of solar power and that HSTPS aspired to a zero-carbon footprint.
36. Mr Abbot said HSPTS was committed to improving the general condition of Conical Hill, through native vegetation planting. He referenced the development of a LMP to manage and enhance lizard populations and a commitment to undertake pest management to benefit bird life on the hill, such as the NZ Falcon/Kārearea. He also referred to the ongoing process of obtaining a Wildlife Act Authority from DoC and said that HSTPS had sought to keep the LMP out of the public domain due to the risk of lizard poaching.
37. Mr Abbot noted that in response to public feedback, HSTPS had made a number of refinements to the proposal including changing the proposed route to come down the west side of the hill so that it would not interact with the main walking track and said that this also reduced the potential for noise effects for neighbouring households.
38. Mr Abbot said that engagement with the community and experts had provided the basis for a proposal that would boost the tourism sector and economy, create employment opportunities, and bring national and international attention to Hamner Springs, whilst also ensuring that any effects would not adversely impact the well-being of the surrounding community and environment.
39. Mr Abbot said that the track counter at the start of the Conical Hill walkway, monitored by DoC, counted 50,000 people visiting Conical Hill during the 2019-2020

period, with no apparent parking congestion which he suggested was a strong indicator that there sufficient parking in the area.

40. In response to the question of staffing Mr Abbot said that the operations model suggests that at maximum capacity during peak periods they will need 23 staff to run the Flyride. He quantified that by saying that each week there was up to 77 hours where the Flyride needed to be staffed, through different shifts, split between two and four staff on site, as well as the manager occasionally. He indicated there would also be offsite staff such as sales and information staff working in the village, as well as maintenance staff. He said there was a need to 'double up' on the number of jobs so that everyone was able to have days off so there would not be 25 staff based on Conical Hill at one time.
41. In terms of car parking Mr Abbot said based on his observations over a 21-year period visitors park their cars in the village and walk to various activities. He provided the example of pool visitors, the majority of whom he said walked rather than drove to the pools. He could see no reason why that behaviour would suddenly change for the Flyride. He also said that the second most popular walk in Hanmer Springs was the Sculpture walk, which also offered parking at the start of the track, yet his observation was that most people walk to the start from the village.
42. In response to queries around the data provided for the traffic assessment Mr Abbot confirmed that HSTPS provided Mr de Verteuil with anticipated patronage data to use as a proxy in his traffic assessment. He went on to provide those figures.
43. Mr de Verteuil had conducted a peak parking demand survey on Saturday 24 April 2021, coinciding with school holidays and Anzac Day, a peak trading period. His observations identified a minimum spare on-street parking capacity of 67 spaces, across a 3-hour survey period. He suggested this did not represent an environment that was constrained by existing parking. In his opinion extending the survey across several weekends was unlikely to have yielded materially different results.
44. Mr de Verteuil considered, based on the hourly peak demand of 60 riders, the anticipated hourly parking demand would be between 23-34 vehicles. In his opinion there was sufficient spaces available to accommodate the peak demand projected for the Flyride proposal.

45. Mr de Verteuil also said his traffic assessment was based on a robust assessment of parking demand; that there was sufficient carriageway width for fire appliances to travel along Oregon Heights, Conical Hill Road, Thomas Hanmer Drive, Chalet Crescent and Acheron Heights when kerbside parking is full; and that the level of traffic was unlikely to result in congestion.
46. Mr de Verteuil accepted that on-street parking would be concentrated at the streets closest to the activity access points, in so far as it applied to patrons who drive to Conical Hill and that Conical Hill Road and Oregon Heights were the most viable parking resources for the Flyride activity. He also agreed that shuttle buses could be used should on street parking demand be higher than anticipated, however he suggested this should be in response to monitoring and investigations that attribute any unanticipated loading to the Flyride activity.
47. Mr de Verteuil agreed with the 'general thrust' of the proposed conditions recommended by Mr Smith, although he suggested some refinements necessary that he considered to be 'more appropriate and practical' which included specific monitoring provisions.
48. Mr de Verteuil supported a pedestrian crossing being implemented across Conical Hill Road, south of Thomas Hanmer Drive should monitoring of parking demand indicate this was necessary. However he maintained his view that Councils programmed Conical Hill pedestrian improvements should not be included as a condition of consent.
49. Dr Trevathan considered that the District Plan noise limits were not suitable for determining potential effects of noise from users of the Flyride, due to the character of the noise. He suggested that to understand the potential effects of noise an assessment of the LAFmax level in the context of the ambient environment was more appropriate, in line with WHO guidance and other literature.
50. Dr Trevathan considered that noise effects would be minimal at dwellings and outdoor areas, where sounds from riders do not typically exceed 45dB LAFmax. He wasn't aware of any guidance which recommended a more conservative approach than this and noted that the District Plan had no daytime LAFmax limit, and a night time limit of 75 dB LAFmax.

51. Due to the topography, and relative location of residential properties, Dr Trevathan recommended that the design and operation of the final two spans of the Flyride (7 & 8) be managed (by slowing the ride down) to limit loud noises so as not to exceed 45 dB LAFmax in this area. He also suggested that similar management may be necessary at Pole T4, dependent on final configuration.
52. Dr Trevathan said a different assessment approach was appropriate when considering noise on the Conical Hill summit pathway and other trails in the area, due to increased vehicle and pedestrian activity in the area around the start of the pathway. He said that up to 65 dB LAFmax was expected over a small portion of the walkway, reducing to 45 dB LAFmax due to terrain shielding.
53. Dr Trevathan stated that walkers on the pathway were often exposed to higher and more frequent noise events, associated with other users on the track. He went on to say that noise levels of up to 75 dB LAFmax could be expected over a small portion of the 'cross-town' link, typical of noise generated in shared use environments by vehicles, mountain bikers, bird calls or broken branches. He later said this was not a particularly high noise level given it complied with night time noise limits for residential receivers.
54. Dr Trevathan said that as a result of the proposal an 'average' traffic and pedestrian noise level increase of 2 – 3 dB would be expected at the start of the Conical Hill summit pathway, a 'just noticeable' average noise level change, with absolute noise levels remaining low. He also said that track/trolley noise measurements taken at the Flyride test track suggests noise associated with the operation itself will be less than 35 dB Laeq(5sec) when received at residential sites adjoining Span 8. This is lower than the ambient noise level of 41 to 44 dB Laeq measured in these areas.
55. Having considered wording of a proposed noise condition provided by Mr Hunt on behalf of Friends of Conical Hill (FOCH), Dr Trevathan and Mr Walton had met to refine Mr Hunt's proposed wording which was provided in his statement. Dr Trevathan reiterated a comment by Mr Hunt that 45 dB LAFmax from Flyride users is a "*low level of sound*" and by contrast, that existing daytime ambient sound levels in the area "*are significant, far exceeding the noise limit recommended*".
56. Dr Trevathan commented that Ms Barker's evidence appeared to be based on an understanding that existing ambient levels are "very low" in all locations at all times,

which he said was not supported by any of the noise experts, including Mr Hunt. He said that a wide range of ambient sounds are currently experienced in the area.

57. In response to Ms Barker's comment that annoyance had not been considered, Dr Trevathan confirmed that 'annoyance was the primary noise effect which could potentially arise and the purpose of his assessment was to consider and mitigate potential noise annoyance effects'. He suggested that those living near to the start of the Conical Hill summit pathway appeared to already be showing a high tolerance of the anthropogenic sounds in the area, if they perceived the existing environment to be reasonably characterised by "very low levels of background noise".
58. Dr Trevathan suggested Ms Barker had conflated his evidence regarding the Conical Hill pathway, and the 'cross-town' link track. He clarified that he did not suggest Conical Hill summit walkway was mixed use and said that 65 dB LAFmax was expected to be generated over a small portion of the walkway, but that 65 dB LAFmax is not a high noise level. As a comparison, he noted that 75 dB LAFmax is the night time limit in residential areas to prevent awakening people who are asleep. He indicated that walkers were often exposed to higher and more frequent noise events than 65 dB LAFmax, associated with other walkers in close proximity to them. He considered that occasional voices from users of the Flyride will be indistinguishable from the mixture of sounds experienced on the walkway, and that walkers will not typically be aware of the Flyride as the source of these sounds.
59. Dr Trevathan confirmed that there would be no measureable change in noise levels in areas where vehicle and walker noise was relevant, and that noise from ride users was expected to be lower than the measured background noise in the area, even at the quietest times.
60. Mr Greenaway assessed the effects of the Flyride proposal on existing recreation and tourism values on Conical Hill and reviewed the proposals compliance with the Reserves Act and the Reserves Management Plan (RMP). He said that the Flyride would be based entirely within one land parcel gazetted as a recreation reserve under the Reserves Act. He said his assessment finds that, *a priori*, the proposal is consistent with the primary purpose for a recreation reserve as defined by the Reserves Act.

61. Mr Greenaway based his analysis on national research, which identifies a set of assessment matters appropriate to review the effect of the proposal on existing recreation values. These were:
- Will the proposed activity on Conical Hill represent a significant change in existing activity modes?
 - Will the commercial component of the activity be sufficiently evident to change the experience of existing users?
 - Will the new activity increase the patronage of Conical Hill to the point where crowding becomes an issue or overwhelms the capacity of facilities on the Reserve, leading to more conflict between visitors?
 - Is the current visitor experience on Conical Hill dependent on a specialised resource that will be compromised by a commercial development?
 - Will commercial recreation on Conical Hill be considered generally incompatible in the context of Hanmer Springs as a visitor destination?
62. Mr Greenaway considered that only one of the five assessment matters raised the potential for concern – that being whether the Flyride will ‘dominate’ the recreation experience on Conical Hill. Mr Greenaway was of the view that due to the placement of the start station away from the tracks to the summit, along with the walking tracks and the view from the summit being the main visitor experiences, that the Flyride would not ‘dominate’. He said though that walking track users may experience a step change in activity on the tracks and that for some this may be an adverse effect.
63. Mr Greenaway in response to Ms Barker’s comment questioning if the application is ‘necessary’ in terms of section 54 of the Reserves Act, said that whilst necessary is subjective the primary purpose of the Act in section 17 includes activities for ‘the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public’.
64. Mr Greenaway went on to say that, although the development was not directly contemplated by the RMP, he maintained the opinion that the development was able to be contemplated within it. He further said that the Reserves Act did not provide any direct impediment, and that broadly, it can be considered an appropriate development for a recreation reserve. Mr Greenaway considered that the site-specific issue was whether the proposal sustained and enhanced recreation values

on Conical Hill. He said his assessment found that considering the obvious role of Hanmer Springs as a developed tourism destination, and the ability to sustain existing recreation values on the Conical Hill track – the proposal was acceptable from a recreation and tourism perspective.

65. Dr Tocher initially addressed the possible effects of the Flyride on the NZ Falcon/Kārearea population on Conical Hill. She noted that NZ Falcon/Kārearea was given the national threat status of At Risk – Recovering by DoC. She said that as the NZ Falcon/Kārearea nests on the ground, they were open to predation during nesting and that with disturbance they may abandon a particular scrape/nest site.
66. Dr Tocher said that there had been no reports of aggressive behaviours associated with nesting within the Conical Hill Recreation Reserve, and no records from the Flyride footprint itself including from her own survey, however she acknowledged that not all sightings are reported by the public. She also acknowledged that observations from Mr and Mrs Rodley indicate aggressive behaviour had been observed near to, but outside the Flyride footprint.
67. Dr Tocher was of the opinion that the aggressive behaviour observed in Oregon Heights by the Rodley's, does not necessarily mean NZ Falcon/Kārearea were nesting on Conical Hill/Flyride footprint. She further stated that in the existing environment, the cutover area is now covered in scrubby vegetation and is unsuitable for nesting but is suitable for foraging.
68. Dr Tocher said that based on the sighting information at hand, she believed there to be a healthy local breeding population of NZ Falcon/Kārearea existing around Hanmer Springs and that there was little doubt that with up to 15 Km² of territory per pair, the Conical Hill and Flyride footprint would be included.
69. Dr Tocher indicated that the construction and ongoing operation of the Flyride may cause a mix of adverse and positive effects for NZ Falcon/Kārearea as follows: noise and disturbance may cause displacement, noise and disturbance to scrapes/nest sites and breeding pairs, injury and/or death through collisions, habitat loss, and a potential positive effect of improved prey abundance through pest management related to the LMP. She said that of these only two required management: potential disturbance of scrapes/nest sites and breeding pairs, and collisions with Flyride passengers and infrastructure.

70. In order to manage any potential disturbance of scrapes/nest sites and breeding pairs Dr Tocher recommended a number of actions to be undertaken by the Applicant (including contractors) which included and extended current best practice actions for plantation forestry operations where nests are present. She further stated that these actions also align fully with resource consent conditions formulated by DoC, for NZ Falcon/Kārearea elsewhere. In order to manage potential collisions, she recommended an adaptive management approach be taken where any collisions are reported if they occur at a frequency of at least 1 every two years which would then require bespoke remedial actions to be developed in consultation with DoC.
71. Dr Tocher said that she remained confident that the proposed consent conditions would protect NZ Falcon/Kārearea (if any) that choose to nest on Conical Hill during construction.
72. Dr Tocher acknowledges the 'legitimate concerns' of Ms Barker regarding the actual and potential effects of the Flyride project on indigenous lizards. She said that the LMP consisted of a comprehensive mitigation package that firstly sought to avoid lizard habitat, to then remediate to a high standard habitat that could not be avoided and to then employ a series of wide-ranging mitigation measures to minimise effects on all lizard species of the Flyride footprint. Such mitigation included a substantive off-site measure, 'that of securing a sizeable conservation covenant to protect rough gecko habitat in perpetuity'.
73. Dr Tocher said there were four lizard species found to reside in the Flyride footprint: the not threatened Southern Alps gecko and Pygmy gecko; the at risk-declining Canterbury grass skink and the Threatened – Nationally Vulnerable rough gecko and that updated DoC threat classifications had reclassified the Pygmy and Southern Alps gecko as At Risk – Declining, and rough gecko to Threatened – Nationally endangered.
74. Dr Tocher confirmed that lizard values (both population and habitat values) were detailed in the LMP, along with an assessment of fauna and habitat significance as per Section 6(c) of the RMA. She indicated that the Flyride footprint was a significant fauna habitat under the CRPS, the District Plan and under DoC guidelines.
75. Dr Tocher said that section 12 of the LMP described a generous mitigation package that she considered would more than balance anticipated lizard population and habitat losses related to the Flyride project. She indicated that the package included

multiple avoidance, remediation/rehabilitation, and mitigation measures, including the substantial off-site compensation measure.

76. Dr Tocher said that the LMP detailed eight actions to be implemented to ensure that some habitat for Rough gecko, Canterbury grass skink, Pygmy gecko and Southern Alps geckos will be avoided during installation of the Flyride. She stated that areas of the Flyride footprint that will be cleared either fully (through earthworks), or partially cleared (selective tree and shrub removal) would be subject to stringent rehabilitation which will only use eco-sourced indigenous plants suitable as habitat for rough gecko and/or Canterbury grass skinks; and will feature a rigorous and lengthy maintenance regime to ensure woody weeds cannot get established in favour of indigenous species.
77. Dr Tocher went on to say that to avoid injury and death of individual rough geckos and Canterbury grass skinks, thus minimising the impacts of the Flyride development, an intensive salvage (rescue) of these two species would take place ahead of works. Further, the release methods for rescued lizards had been carefully crafted using best practice to maximise the chance that released animals will survive, would not home (return) back to the works footprint during construction, and to ensure their release would have minimal effects on any lizards already present at the release site.
78. Dr Tocher indicated that mitigation measures would include the creation of 1.05 ha of new habitat for rough gecko, Canterbury grass skink, Southern Alps geckos and Pygmy geckos adjacent to the footprint, including the restoration of important linkages between rough gecko indigenous scrubland habitat inside and outside the Conical Hill Recreation Reserve. This would include the creation of the new habitat involving a mix of indigenous planting and the provision of new rock habitat. She indicated that one new habitat site, near the summit of Conical Hill, would be used as a release site for salvaged Canterbury grass skinks, and would be restored and augmented with 6m²rock, ahead of salvage.
79. Dr Tocher said rodent monitoring and control would be undertaken across Conical Hill Reserve, including new habitat sites, in the future and as required. She also said wasp control would be implemented, indefinitely, as wasps were a predator of juvenile lizards.

80. Dr Tocher indicated that progress had been made to secure a QEII covenant over private land that is otherwise unprotected. She said that once secured, the covenant will be the first ever established on private land for rough gecko, a species for which habitat loss on private land is a significant threat, hence its recently elevated threat status. She said the covenant would be applied over a site where rough geckos were known to exist as an apparently viable population, and that it would be subject to a management plan prohibiting earthworks and vegetation clearance, afforestation, and providing for woody weed control in perpetuity. She considered the management of the new covenant might also benefit other lizard species residing there such as those present over the Flyride footprint.
81. Dr Tocher considered the above measures addressed Ms Barker's concerns with the level of mitigation.
82. In conclusion Dr Tocher said she was confident that the Flyride project would not impact significantly on the local NZ Falcon/Kārearea population, so long as her recommendations were applied as conditions of consent. She further stated that in her view the pest management planned to manage affected lizard values may result in a net positive effect for the NZ Falcon/Kārearea that frequent Conical Hill.
83. In terms of lizards, Dr Tocher anticipated that there would be no significant residual adverse effects once the avoidance, remediation, mitigation, and offsite compensation actions described in the LMP had been implemented effectively. She further stated that in the long term the implementation of the LMP would enable lizard populations within Conical Hill and further afield to be maintained at higher levels than those observed pre-installation and operation of the Flyride.
84. Mr Milne initially addressed the visibility of the proposal. He said that the visibility of the poles and platforms from the assessed public viewpoints beyond the town centre would not be visually prominent and were unlikely to be noticeable. This was attributed in part to the distance and angle of the view, with the majority of the ride obscured by trees and/or landform in some of these views. He maintained that the adverse effects rating for these viewpoints was low to very low in the short term, with potential for effects to be fully mitigated from some of these viewpoints in the long term as revegetation planting in the south clearing became established.

85. Mr Milne went on to say that from viewpoints in and near the town centre only pole T7 and the stop station would be visible, with adverse effects rating for these viewpoints assessed as moderate-low. He noted that the stop station platform itself was designed to comply with the Hanmer Springs Design Standards, so while noticeable, it would be appropriate to the setting and that the pole will be recessive in colour but may still be noticeable given the proposed tree removal around and behind it.
86. In terms of the closest viewpoints Mr Milne said the adverse effects ratings were assessed as moderate and he considered it was likely that private residences in proximity to the stop station would experience a similar degree of adverse effects on visual amenity. However, he noted that this view was already degraded due to the weed infested clearing and considered that a potential positive effect of the proposal was the revegetation of this hillslope with native vegetation between these dwellings and the stop station which would lessen the visual and privacy impacts of the stop station on these residences.
87. In addressing concerns regarding tree removal Mr Milne said that while the number of trees proposed to be removed had increased since the original application, this was the result of further site investigations and consultation with an Arborist to provide a greater level of accuracy and ensure the desired project outcome. He said it was only proposed to remove trees within the ride corridor or those that posed a risk to the ride operations and that the majority were on the obscured west slope. In his view the forested character of Conical Hill would be maintained.
88. With regards to the natural amenity of Conical Hill, Mr Milne was of the view that any adverse effects would be of a low degree on its naturalness as experienced from the township. This was associated with tree removal and the potential perception of built form. Within the site itself he considered that adverse effects on naturalness were primarily confined to the area around the start station due to earthworks and the addition of built form. Again, he said these effects were assessed as low.
89. Mr Milne addressed effects on peace and tranquillity, saying the proposal would have moderate adverse effects on the tranquillity of the hilltop lookout area which were attributed to the proximity of the start station and first pole, which will become a hub of activity associated with the ride. While he did not consider the new activity would dominate the summit, being a complementary activity to the walking track

and Lookout, it would likely result in a livelier summit experience than at present. He went on to say that aside from the summit area, the Flyride track was located on the west side of the hill, away from the existing walking track. This meant it was unlikely to affect the landscape values associated with the Conical Hill walking experience with perhaps the exception of noise from ride users.

90. Mr Milne concluded by saying that he maintained the opinion that the Conical Hill Flyride had been appropriately designed and sited, taking into consideration the character and values of the application site and surrounds. He considered overall, in terms of landscape and visual amenity, the proposal would sit comfortably with the surrounding environment and would represent a level of change that was acceptable within this setting.
91. During the hearing I asked Mr Milne to visit numbers 17 and 24 Oregon Heights, the closest dwellings to the stop station. Having done so he noted that both had small western facing decks with views of the stop station and Pole 7. He was satisfied that the proposed landscape condition would in time provide privacy and screening. He considered the proposed kanuka planting would take around 6 years to reach a full screening height.
92. Mr Broerse is a large animal veterinarian in rural practice, and he addressed the effect of the Flyride activity on horse welfare and the riding environment. He said he understood that the noise generated by the Flyride activity itself would be low and that the main noise would be generated from the reactions of the participants. In his view horses were unlikely to perceive the shouts and screams of users to be a threat. This was due to the distance from the track, the dense vegetation and topography of the terrain and the proposed route. He said that due to the noise being distant, it would not be any more confronting than the existing noises of vehicles, mountain bikers, etc and that it was reasonable to conclude that a horse on the track was unlikely to be spooked by sounds emanating from the Flyride.
93. Mr Broerse said that overall horse welfare would not be compromised as the proposal would not create an unsafe riding environment. He considered that noise from the Flyride would be no more confronting to a horse than that which may be experienced by encountering other users of the track. He considered the installation of signage on the Lucas Lane Track to notify riders of the activity would be

appropriate and did not believe establishing an alternative track was necessary to ensure the safety of horse riders.

94. Ms Whyte addressed planning matters. In terms of the permitted baseline, she commented that it was a discretionary matter that I can determine whether or not to apply. She clarified that her consideration of the proposal, in relation to the effects and assessment against the objectives and policies, is not reliant on the permitted baseline being applied.
95. Relying on the evidence by Dr Tocher in relation to the NZ Falcon/kārearea, Ms Whyte concluded that the proposal was consistent with the relevant objectives and policies relating to biodiversity.
96. In response to Ms Barker disagreeing as to the relevance of Chapter 9 of the CRPS, Ms Whyte stated that the District Plan provisions give effect to the CRPS, and therefore she considered that the proposal was consistent with those provisions of the CRPS, particularly the objectives and policies in Chapter 9 relating to Ecosystems and Indigenous Biodiversity.
97. In terms of the consistency with Section 6(c) of the RMA which had been raised by Ms Barker, Ms Whyte considered that the key matter under section 6(c) related to significant habitat of indigenous fauna, particularly lizards. Ms Whyte further said that the key components identified in the LMP by Dr Tocher, was the same information she had relied upon when considering the effects of the proposal relating to ecosystem and biodiversity matters, as well as when she had considered the objectives and policies in Chapter 13 of the District Plan and Part 2 of the RMA.
98. Ms Whyte said proposed conditions created a link between the resource consent and the Wildlife Act Permit processes, with the LMP forming part of that process. She remained of the view that the effects of the proposal in relation to biodiversity and indigenous fauna had been appropriately avoided, remedied and mitigated and the proposal was consistent with the objectives and policies of the District Plan, the CRPS and section 6(c) of the RMA.
99. Ms Whyte provided an updated set of conditions addressing matters raised by Dr Trevathan, Mr de Verteuil and Mr Broerse. Referring to the traffic conditions she considered the changes proposed were clear in what was to be monitored and what

the threshold for monitoring was. She said that changing the carparking monitoring conditions was a better approach than altering the section 128 review condition as suggested by Mr Edwards. She also referred to an advice note as a means to reinforce the link between the carparking monitoring condition and the potential for conditions to be reviewed.

100. Ms Whyte concluded that the adverse effects of the proposal were able to be avoided, remedied and mitigated, and where appropriate, she had recommended conditions of consent to ensure that relevant matters were implemented. She considered the proposal was consistent with the relevant objectives and policies of the District Plan, including those related to settlements, Hanmer Springs, Natural Hazards, Biodiversity and Transport; and that it was consistent with any relevant matters in Part 2 of the RMA.
101. In response to a question I posed, Ms Whyte considered that the 'off-setting' associated with the LMP would meet the s104(ab) of the RMA threshold. She said however that weed control was not offsetting.

Submitters

102. Mr Pawson expressed concerns about car parking occurring on Oregon Heights. He said he had no confidence in a monitoring or enforcement regime and considered that resident only parking should be introduced, and that the Applicant should provide a shuttle from the pools. He said that he wanted the application declined.
103. Mr Fletcher, who ran Hanmer Holiday homes, supported the proposal. He said that he'd never seen car parking as being an issue, considering that most people would walk and noting that by his calculations 80% of the housing stock with the town was within 700m of the site. He said that there were only one or two weekends a year when there was a lack of available parking.
104. Mr Fletcher said there was strong support for the proposal within Hanmer and that it would bring another string to the towns bow. In this regard he said that his feedback was that people were looking for other things to do and that it would bring more people back the Hanmer. He also considered the proposal would extend the tourist season and that it could help in supporting the maintenance of the track network.

105. Mr and Mrs Langford joined the hearing via video link and said they intended to retire to Hanmer to a property they owned on Oregon Heights. They said their key issues with the proposal were regarding noise (being an annoyance and not possible to mitigate), increased car parking and foot traffic, the potential sale of the operation, lack of disabled facilities, loss of privacy and health issues.
106. The Langford's indicated that they would be supportive of the project if it were sited in a different location and the car parking was addressed to provide for a wider audience.
107. Mr and Mrs Corbishley who own a property on Oregon Heights, also joined the hearing via video link and expressed concern about the number of breaches of the District Plan rules. They said they were not opposed to the Flyride itself, just the location it was proposed in.
108. The Corbishley's went on to say that they were concerned about parking, which they said was already an issue, noise from the activity, people using Oregon Heights looking for the track up Conical Hill, the removal of trees and the impact of a diesel generator. They said this was their piece of paradise and that the proposal should be reconsidered.
109. Ms Sargisson lived in Acheron Heights and was concerned about the overall feasibility of the proposal and the increased noise associated with it. She said that the proposal may result in the town losing the essence of what draws people to it in terms of the quiet and peaceful enjoyment.
110. Ms Wardle and Ms Weaver presented evidence on behalf of the Hanmer Springs Horse Riders Inc. They explained the background to the Lucas Lane track and noted the proposed Flyride towers were roughly parallel to the upper parts of the track at a distance of approx. 45 to 50m, possibly reducing to around 35m with the allowance for micro-siting. They considered this was insufficient separation for safe horse riding due to the animals' acute hearing and eyesight. They believed that noise effects from Flyride patrons and the appearance of something approaching overhead could cause a horse to bolt and endanger the horse, the rider and any other users on the track.
111. Ms Wardle and Ms Weaver went on to address matters raised in Mr Broerse's evidence. They pointed out in relation to the screening provided by existing trees

that the section of the track closest to the Flyride was not on Conical Hill Reserve but was part of Mataraki's plantation forestry and that the trees were mature and could be harvested at any time meaning any presumed screening would be absent for some years. They also disagreed that horses were unlikely to perceive the types of noise outlined (screaming/shrieking) to be a threat due to the distance. In their view the distance was insufficient to provide safe separation due to a horse's acute hearing.

112. Ms Wardle and Ms Weaver sought that if the Flyride was approved an alternative safe track be provided for horse riders.
113. Mr Carter said that he had a lifelong association with Hanmer Springs, including Conical Hill and provided extensive evidence of his memories of walking around Conical Hill. He said he was strongly opposed to the Flyride with the key reason being that Conical Hill was, and always has been, of special importance to the Hanmer Springs Community, providing a great family experience and allowing walkway users to enjoy a pleasant and tranquil experience as a contrast to the business of the town centre.
114. Mr Carter said to construct a Flyride would alter forever the nature of the Hill and the experiences associated with its use. He said he also opposed the Flyride resource consent for the following reasons:
 - Car Parking
 - Visual Effects
 - Preservation of natural resources
 - Fire risk health and safety
 - Noise
 - Amenity Values
115. Referring to noise Mr Carter said it would be impossible for the applicant to control excited screams and shouts from users as they travel down the Flyride. He went on to say that Conical Hill Reserve was an iconic destination for visitors and for locals to walk and enjoy the nature that it offers, the great views, smell of the forest, watching and listening to the native birds and the benefit for our wellbeing.

116. Mr Carter questioned whether the economic benefits to Hanmer Springs and the Hurunui District outweigh the adverse effects on Conical Hill, and he considered with better planning and communication a solution could be achieved with another site away from Conical Hill.
117. Mr and Mrs Rogers raised issues around the ongoing maintenance of the Flyride operation, the impact on the quality of Conical Hill, the noise associated with the proposal which they considered had not been properly assessed, car parking and the loss of flora and fauna. They felt they had been bullied during the process and that the community was divided over the project.
118. Mr Martin resides at 32 Acheron Heights, immediately adjacent to an existing access to the reserve at 34 Acheron Heights. He noted that the Hanmer Springs community had become divided on the issue of the Flyride.
119. Mr Martin said that neither himself nor the group of residents known as FoCH were opposed to the development as such but rather the proposed location on Conical Hill. However, he did question the need for another attraction in the town given the already high number of visitors. He went on to suggest locations on Jacks and Jollies Passes and shared a video of a similar ride in Tennessee.
120. Mr Martin said the Conical Hill area meant so much, to so many, in terms of natural quiet, peace and tranquillity, birdsong, wildlife interactions along with recreational and fitness opportunities. He considered siting a Flyride in this location would severely compromise, erode or destroy the amenity values that past, present and future generations of visitors to Conical Hill hold in high regard.
121. Mr Martin indicated that he was extremely concerned at the inclusion of 34 Acheron Heights as a walkway to Conical Hill and the Flyride. As the adjoining landowner who had an easement over it as access to his property, he said he was already affected by noise, trespass, loss of privacy and theft as a result of the Council promoting its use by the way of signage. He said he was concerned about increased noise and privacy associated with people accessing the Flyride.
122. Mr Martin said he was also extremely concerned at the unquantified and potentially very significant effects the proposal would have on wildlife. He noted that geckos and lizards were present throughout the area and liable to be disturbed and killed during

the construction process and that the NZ Falcon/Kārearea was present and nesting in the reserve and were well known amongst local residents.

123. He said, 'we should not have to pay such a hefty price to preserve what so many in the community hold dear and to preserve the peace and quiet we currently enjoy at the expense of chasing the tourist dollar.'
124. Mr Smith had recently purchased the property at 24 Oregon Heights and indicated he would not have undertaken the purchase if he'd known about the Flyride at the time. He said he had purchased the property because of the tranquillity and quietness of the location and considered with the proposal this would be lost. He also expressed concerns about noise, screening and privacy.
125. Mr Cleary acting for FoCH said the group strongly opposed the grant of consent for the Flyride proposal, viewing a large-scale *downhill amusement ride* to be fundamentally incongruous with the area's values and characteristics. He said it was unnecessary and inappropriate commercial exploitation of a resource which was identified in Council documentation as an icon of the Hanmer Springs community.
126. In terms of the permitted baseline (s.104 (2) of the Act) Mr Cleary submitted that while the Plan permits "*recreational activities*" within the Open Space Zone, this term was undefined. As such, in theory there was an extremely broad range of activities that may fit within the term. In reality however, he submitted at least in respect of the site, this is more likely to be limited to low impact active recreation activities such as walking and cycling.
127. Mr Cleary accepted that there would be some positive benefits associated with the proposal, including employment opportunities during the design, construction and operational phases. Beyond that he submitted no weight should be given to Mr. Abbot's statement that the Flyride "*... is expected to inject \$4m into the local economy in its first five years*" as no independent economic analysis had been provided to support that statement. He also submitted that reference in Mr. Abbot's evidence to the likelihood of a set percentage of turnover from the Flyride being used to upgrade Conical Hill and provide for much needed investment should also be ignored in the absent of a firm enforceable condition of consent which guarantees these outcomes.

128. Mr Cleary contested that the Applicant's experts had not made any meaningful effort to establish the values which the Hanmer Springs community associate with Conical Hill. He said this type of failure led the Court to be critical of the experts in *Yaldhurst Quarries Joint Action Group v Christchurch Council* ([2017] NZEnvC 165) case where the Environment Court said:

[116] To test the proposition that the scale and intensity of [amenity] effects will be adverse, experts need first to establish the baseline environment against which the effects are evaluated.

129. Mr Cleary said the Court went on (at paragraph 151) to make its position clear that an inquiry of residents' amenity values as they experienced them may have assisted in determining where the threshold of acceptable effects lies, a position that was upheld on appeal. He submitted that this had left residents to plug the gaps in the Applicant's analysis referring to the examples of association with Conical Hill provided by Mr Carter and Mr Rogers.
130. Mr Cleary said that in respect of NZ Falcon/Kārearea, long-term residents Mr and Mrs Rodley confirmed that Conical Hill was proving a very popular breeding area for native falcon, and they disputed Dr Tocher's key finding that there is a lack of evidence that falcons nest on Conical Hill and confirmed instead they had observed nesting just above their house. This he said was in close proximity to the end station of the Flyride. He noted Dr Tocher had now suggested some conditions which may assist in mitigating effects on the NZ Falcon/Kārearea. He said it would seem highly likely that a further wildlife permit would be required from DoC given the proposal will disturb NZ Falcon/Kārearea.
131. Mr Cleary submitted that with respect to geckos/lizards, the Applicant's case was essentially to leave this to be resolved by the wildlife permit which has been lodged, but yet to be obtained. He said reading between the lines it was apparent that significant mitigation and/or offsetting of effects was required to compensate for a proposal that will result in the inevitable loss of lizard population and habitat on the site.
132. Mr Cleary submitted that the summary presented by Dr Tocher of the LMP remains essentially an outline only of the proposal and it was impossible therefore to test her analysis, and to accurately determine precisely how significant the effects in lizards

would be, whether the new habitat proposed would be effective, and whether or not the offsetting was either adequate or appropriate. Further, he said none of the mitigation/ compensation and/offsetting measures summarised by Dr Tocher were proposed as conditions of consent and therefore, how could these features of the proposal be taken into account or given any meaningful weight. He submitted that it was inappropriate to proceed on the basis that an issue of such obvious significance should be left to the jurisdiction of another authority (DoC), and to a process which is not subject to any public scrutiny.

133. Mr Cleary referred to the *Save Happy Valley v Solid Energy NZ Ltd* case where Solid Energy had obtained permits under the Wildlife Act 1953 to translocate endangered *Powelliphanta Augustus* snails from the site of a proposed open cast mine. The Environment Court confirmed that the existence of wildlife permits did not oust its jurisdiction to consider effects on the endangered snails when it stated:

[36] The effects of habitat destruction are within our jurisdiction and if we form the view, as we have, that one effect of the mining process is the possible extinction of the snails, we are entitled to have regard that effect notwithstanding the existence of wildlife permits.

134. Mr Cleary went onto say that even if the applicant had obtained a wildlife permit, it would still have been within my jurisdiction to consider any potential wildlife and indeed it was necessary to do so. He submitted that the Applicant appears to be seeking to either oust my jurisdiction or limit my analysis of a significant issue.
135. Mr Cleary submitted that the Applicant had not provided an assessment by an appropriately qualified heritage expert of the heritage values associated with the “iconic” Conical Hill, and/or how these heritage values may be affected and that I was entitled to regard that as a significant omission given the active requirement in the Act to recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development (s 6(f) of the Act).
136. Mr Cleary agreed that the provision of the Reserves Act 1977 (Reserves Act) and the District Council’s RMP were of relevance. Having referred to the RMP Mr Cleary said that in terms of relative importance to the Hanmer Community and others, Conical Hill is of equal standing to the thermal pools. It was just as iconic, a word that has not been used lightly.

137. Mr Cleary said that the meaning or importance of the of the word “conserved” in Section 17 (1) (c) of the Reserves Act was simply not analysed in the Application or the evidence. Nor had there been an appropriate analysis of the “qualities” of Conical Hill Reserve that contribute to its pleasantness, harmony and cohesion of the natural environment. He submitted that the proposed establishment of the Flyride proposal will be inimical to the above requirement to conserve and would result in a level of commercial development and associated effects which were inconsistent with the conservation of the natural environment as experienced by users of Conical Hill. He noted that both Mr Greenwood and Mr Milne accept that there will be adverse effects associated with the proposal.
138. In terms of the District Plan objectives and policies Mr Cleary submitted that it was difficult to properly test the proposal against, in particular, the relevant objectives and policies of Chapter 13 as they relate to an area of significant indigenous habitat. He went onto say that overall, there is too much uncertainty around the impacts of the proposal, such that I could not be satisfied that consent should be forthcoming.
139. Mr Edwards provided transportation related evidence for FoCH. He noted that he was not opposed to the proposal and that accurately determining the extent of patrons who will drive to the activity was difficult. However, he considered there were significant shortcomings in the analysis of Mr de Verteuil in relation to the potential on-street parking effects of the proposal. He summarised these as being:
- a) A failure to confirm the Applicant's contention that patrons will walk to the site;
 - b) Not recognising that patrons drive to other tourist related activities within the wider village area that are located the same separation distance from the village centre;
 - c) That the analysis was based on a single ambient on-street parking demand survey that only went for three hours on the Saturday of Anzac weekend April 2021;
 - d) The claim that the survey was undertaken during a peak trading weekend for the Hanmer township, yet offering no data to substantiate this;
 - e) There being no substantiation to claimed Flyride vehicle occupancy rates;

- f) That the analysis of parking demand was spread over the entire survey cordon area and ignored that Conical Hill Road and Oregon Heights were the most viable parking resources to cater for expected activity generated parking demand.
140. Mr Edwards considered Mr Smith's Figure 2 was a far more reliable indication of where the Flyride generated parking will occur and he agreed with Mr Smith that there was potential for the northern end of Conical Hill Road and Oregon Heights to have extremely high levels of on-street parking occupancy as a result of the operation of the proposed Flyride activity.
141. Mr Edwards also agreed with Mr Smith's comments regarding vehicle congestion in the various residential streets and agreed that the 14m carriageway width of Conical Hill Road meant that on-street parking could be provided with no effect on through traffic function. However, he said that Oregon Heights and Acheron Heights were narrower roads where parking occurring on both sides will impede property access for residents and emergency vehicles unless existing no-stopping restrictions were properly maintained and properly enforced. He said unless there was a commitment from the Council to properly maintain existing no-stopping restrictions, and a commitment to enforce them on a regular basis, then the potential effects of the proposal on the residential properties in both Oregon Heights and Acheron Heights will be compromised.
142. Mr Edwards acknowledged that on-street parking was a shared resource, however, he considered the Flyride activity as currently proposed was highly likely to place a disproportionate parking load on the available on-street parking supply, and that this will have effects upon access and residential amenity that were likely to be more than minor and was inconsistent with objectives and policies relating to commercial activity parking demand being provided for in residential streets.
143. Mr Edwards strongly disagreed with the Applicants contention that all patrons would walk to the activity. He said the advice from all three traffic engineers was that the activity would likely generate on-street parking demand, but the exact amount was difficult to predict.
144. Mr Edwards agreed that a monitoring condition was appropriate, but that the wording of such a condition needed to be precise enough to give residents

confidence in what will be done to measure, and if necessary, mitigate potential on-street parking related effects. In his opinion if there was a s128 review condition to this effect then it needs to cover the following points:

- a) What is the potential effect being monitored?
- b) What is the agreed level where the effect is considered to be less than minor?
- c) How will the effect be monitored?
- d) What is the trigger point for something to be done to mitigate effects?
- e) What are the mitigation solutions? The alternatives of a car park on reserve land or a shuttle bus from the Thermal Pools could be implemented;
- f) How will any benefits of the solutions be monitored to ensure effectiveness?
- g) What is the point where monitoring is no longer required?

145. Ms Barker provided planning evidence for FoCH and individual submitters Gavin Martin and William Smith. She considered that there was insufficient information to fully assess the application, particularly with respect to indigenous fauna. Her evidence also contained a letter from Mr Hunt of Malcolm Hunt Associates regarding noise conditions.
146. In term of noise Ms Barker acknowledged that the noise conditions now proposed reflected the recommendations of Mr Hunt. She said however that there were other noise issues associated with the level of noise experienced within the reserve and the effects that would have on people using the reserve and recreational amenity values. These she said were relevant to how the peace and tranquillity of the reserve was assessed. She also said it appeared that there was general agreement that there would be a change in how people experienced Conical Hill as a result of the proposal, however it was unclear how significant that change was going to be as a result of noise. She also noted that 'vocalisations' would be heard by residents on a regular basis and even if they meet the 45 dB LAFmax condition could be of particular annoyance to residents.
147. In terms of traffic and parking Ms Barker considered the effect of on-street parking from a residential amenity perspective had been significantly underestimated and that there would be direct effects on residents' amenity as a result of the increase in on-street parking and corresponding increase in people.

148. With regard to the issue of indigenous biodiversity, Ms Barker said that there were a number of concerns and unanswered questions around the LMP and the adequacy of protection for the NZ Falcon/Kārearea and lack of independent review by the Council.
149. Ms Barker also addressed residential amenity, including the timeframe for any vegetation screening of the stop station and the loss of privacy for residents from the street due to the increased street use. She was of the view that the effects on residential amenity would be more than minor.
150. Ms Barker went onto say that the application failed to address requirements of the Reserves Act which seeks to conserve the qualities of the reserve and whether any business within the reserve was necessary to enable the public to obtain the benefit and enjoyment of the reserve. She said alternative hillside locations removed from residences and the peace and tranquillity of the Conical Hill Reserve would be more appropriate and could immediately negate the issues of noise, parking and residential amenity.
151. Ms Barker considered the significant adverse effect threshold was reached on some matters which would trigger the consideration of possible alternatives test.
152. Ms Barker considered overall that the effects on the environment were more than minor and stated that the proposal was inconsistent with the objectives and policies of the District Plan, some of which she said had not been considered. She considered the application should be declined.
153. Ms Bermingham owns the property at 26 Oregon Heights which was presently unbuilt on and backed onto the Conical Hill reserve. She considered that noise from the operation of the Flyride would not be insignificant and had measured screams at around 68 dB. She went on to refer to the physiological and social effects of noise and the impact it can have on the human body. She could not see any way that the noise from the Flyride would be eliminated or reduced even if the ride was slowed down.
154. Ms Bermingham went on to say that she was not opposed to the activity just its location and she had related concerns about site stability with the removal of trees and the visual and privacy impacts on her property.

155. Dr Bower indicated that she had both personal and professional concerns related to the project. Her personal concerns were around the impact of the proposal on amenity values of Conical Hill. She referred to her traumatic experience in the February 2011 Christchurch Earthquake and the impacts screams now have on her.
156. From a professional perspective (Dr Bower is an Associate Professor of Environmental Science teaching Environmental Systems at Canterbury University) Dr Bower expressed concerns about the biodiversity offsetting associated with the skinks and geckos. She said what is uncertain was the success of the LMP techniques and as such it was "a bit of a gamble", particularly as the plan had not been reviewed by others.
157. Dr Bower went on to talk about international experience with consent conditions. She said that research showed that compliance rates with consent conditions was about 68% and that with consents monitored by Councils on private land the compliance rate was about 50%. She said that in terms of the international experience around the loss of biodiversity that no net loss was rare and that the chance of only limited loss was 50-60% meaning that there was a 40-50% chance of significant loss. She concluded by saying there was next to zero chance of achieving a no net loss situation.
158. Dr Bower referred to the LMP not linking to consent conditions and therefore if it wasn't an enforceable part of the consent condition how would it be known if the LMP was successful or not. She also said that DoC did not have a monitoring and enforcement strategy as of 2017.
159. I also received statements from Ms N Vincent, consultant planner on behalf of Fire and Emergency New Zealand (FENZ), Mr and Mrs Rodley and Ms M Clay.
160. The FENZ position was neutral, however, it strongly supported the Council officer's recommendation to include a condition requiring a Fire Emergency Operations Procedure be drafted with FENZ prior to the activity commencing on site.
161. Mr and Mrs Rodley own a house on Oregon Heights and oppose the proposal. Their reasons include disturbance of endangered native species, noise and insufficient parking. They considered Conical Hill was a very popular breeding area for the NZ

Falcon/Kārearea and that they had observed them nesting above their house including aggressively defending their territory, nest and young.

162. The Rodley's indicated that during the last 25 years they had planted native trees extensively on their property which now contained Bell Birds, Tui and Kereru and it was a very peaceful enjoyable location and a haven for birds. Their concern was that this peace and tranquillity would be changed forever by the installation of the Flyride.
163. Ms Clay was concerned about the potential for adverse noise effects, visual effects, and effects on the local fauna. She considered that the Applicant had not adequately addressed matters of noise and had failed to recognise that the existing environment is one of peace and quiet. She said continual noise from the machinery and plant from the Flyride, in conjunction with the noise associated with customers yelling and screaming as they travel downhill would have a significant detrimental effect on the peaceful environment that currently exists. She said removal of a significant amount of vegetation would affect the heritage and visual characteristics of Conical Hill and have an adverse effect on fauna that use it.
164. Ms Clay said she was not against new tourism ventures utilising the Hanmer forests, but considered that this proposed development, by its nature was not accessible to all members of the community, had a range of significant adverse effects, and would not meet relevant tests of the RMA. She went on to say that it would make more sense to have a development that carried all members of the community up the hill, including those physically unable to reach the top.

Council Response

165. The Council witnesses provided the following responses.
166. Mr Smith noted that proposed Condition 5a by the Applicant provided for monitoring results to be provided to Council within an 8-week period of monitoring. He said that while he supported the inclusion of the condition, he considered that this could be reasonably delivered to Council within 2 weeks of monitoring. This he said would recognise the importance of addressing any adverse effects that may be identified through monitoring as quickly as practicable.
167. Mr Smith acknowledged that the the current lack of pedestrian facilities to cross the upper part of Conical Hill Road was an existing safety risk, however considered that

if parking associated with the activity were to spill onto Thomas Hanmer Drive or Conical Hill Road to the south of Thomas Hanmer Drive, the existing safety risk would be exacerbated by the additional vehicle movements and pedestrian volumes. He proposed an alternative condition relating to monitoring to address this.

168. Mr Smith agreed that staff parking was not well explained or addressed within the Applicant's parking assessment and that further details as to how this will be managed were necessary. He also supported running regular shuttle buses as a means of mitigation but noted issues with providing dedicated parking and said that alternative mitigation would be to reduce the scale of the activity in terms of the maximum number of riders per hour.
169. Mr Smith also agreed that more precise wording of review conditions was necessary to remove uncertainty and provide transparency around how adverse effects would be identified and adequately mitigated and he recommended amendments. He agreed that any surveying should be three times a year and cover different times i.e., school holidays and public holidays.
170. Mr Smith acknowledged that there was a level of uncertainty involved in the assessment of transport matters where judgement is applied to determine the most likely outcome and that the nature of the proposed activity was unique. For this reason, he considered that the monitoring conditions proposed were suitable and necessary mechanisms to address any potential adverse effects relating to parking associated with the activity.
171. Mr Smith supported a wayfinding plan and said that this should involve very clear signage and recommended parking areas. He said that fundamental to the wayfinding plan was the implementation of the works proposed.
172. With reference to residents only parking, Mr Smith said it was used in Queenstown however he felt that in this context it would be ineffective without enforcement and that it would simply move the problem somewhere else.
173. Mr Walton noted that vocalisation was the primary noise concern and he considered that the 45 dB LAFmax level at dwellings and outdoor living areas was an appropriate limit. He agreed that addressing this through speed control on the Flyride was the primary source of mitigation. In terms of the appropriate noise level within the site

itself he said that this was tricky but that a level of 55 dB LAFmax would not be uncommon for a reserve and that this level would only be exceeded for a very small area of the walking track. He noted that there was not a lot of guidance in term of the annoyance of this type of noise. He did not consider areas to the north and east of the Flyride would be impacted by noise.

174. Ms Bewley addressed a number of matters that arose during the hearing including the two issues she had not reached a conclusion on. She said that having reviewed Mr Broerse's evidence she considered the noise effects on horses on the Lucas Lane track had been adequately addressed and she considered a condition associated with signage alerting horse riders to the Flyride activity was appropriate and should be prepared in conjunction with the Hanmer Springs Horse Riders Inc. She also indicated that she was satisfied that matters associated with NZ Falcon/Kārearea had been addressed.
175. Ms Bewley said although outside of this resource consent process, planned improvements to the Conical Hill walkway entrance and signage on Council's work programme would increase legibility and she also noted that the Council had committed to upgrading the Lookout. In terms of track improvements Ms Bewley said that any arrangement should be dealt with in the lease agreement.
176. Ms Bewley agreed with the revised noise conditions, the conditions regarding the NZ Falcon/Kārearea, the fire risk condition and the landscape conditions. She noted that further discussions were required around the traffic conditions.
177. Ms Bewley said she was satisfied with the responses from Dr Tocher and was comfortable with the Wildlife Act process in addressing issues associated with the skinks and geckos. She considered however that there was a s6(c) of the RMA matter to be addressed in this regard.
178. Finally, Ms Bewley addressed the issue of heritage features. She said the Lookout building and rock plaque were listed as heritage features, however the site beyond those did not hold any heritage status in the District Plan. She did not consider the Lookout building and rock plaque would be affected by the proposal.

Minutes

- (i) Lizard Management Plan Peer Review

179. The evidence of Dr Tocher included reference to the LMP as an Appendix. In relation to the LMP the Applicant had sought a confidentiality arrangement to protect the location of a proposed lizard habitat because there was a risk of members of the public finding out the location of the lizard habitat and poaching the lizards or damaging the habitat. I felt at the time the provisions of s42 of the RMA did not provide me with the ability to grant such a request and advised so in my Minute 1. As a result, the Applicant chose to withdraw the LMP from the evidence.
180. Subsequently at the hearing on the 7th of October Dr Tocher provided a summary statement which gave some more context around the LMP. Also of note was that the LMP had been submitted to DoC to support an application for Wildlife Act (1953) permission to carry out works over lizard habitat/populations.
181. Counsel for the submitter FoCH Mr Cleary submitted in the circumstances it was impossible to test Dr Tocher's analysis and accurately determine precisely how significant the effects on lizards would be, whether the new habitat proposed would be effective, and whether or not the offsetting was either adequate or appropriate. After some discussion Mr Cleary suggested it was available to me to commission a review of Dr Tocher's LMP pursuant to s41 of the RMA. Ms Appleyard for the Applicant agreed.
182. This was a rather unusual situation in the context of a hearing process, and I accepted there was an element of the unknown in terms of the LMP and that there is a potential for a significant adverse environmental effect (the s41C(4) of the RMA test). I therefore accepted that the commissioning of an independent peer review of the LMP should be undertaken to consider what the analysis was based on and whether it was robust, how significant the effects on lizards would be, and whether the proposed mitigation contained within the LMP was adequate and effective and able to achieve what was proposed. I indicated that the peer review should be set out in such a way that it could be made publicly available, but that it should not contain any material or details that might be considered confidential.
183. I therefore, pursuant to s41C(4) of the RMA, commissioned a peer review of the LMP by herpetologist Dr M Lettink. I enabled the Applicant or any submitter to provide a response to any matters raised in the peer review.

184. Dr Lettink's peer review included a description of the lizard fauna of Conical Hill/Te Tihi o Rauheha Reserve; an assessment of the Applicant's LMP against key principles in DOC's best-practice guidance for lizard salvage; concerns regarding the proposed lizard management; the significance of the effects on lizards; and an assessment of the adequacy of the proposed mitigation package.
185. Dr Lettink considered that overall, the LMP to be very comprehensive and well-informed and was one of the two best LMPs of dozens she had reviewed over the last decade. However, she did have some concerns including that the LMP needed to clarify whether salvage of all four lizard species would be undertaken; that release protocols for the rough gecko required further consideration given its threat ranking, the considerable cost and time required for salvage, the very low detectability and the potential for geckos to be harmed (injured or killed) by construction activities if homing occurred; and that post-release monitoring of salvaged lizards needed to be addressed.
186. Dr Lettink agreed with Dr Tocher's assessment of the significance of effects, which is consistent with DoC's approach. She said she was unable to quantify how significant these effects would be due to uncertainties regarding both the number of individuals affected in relation to local population sizes and the effectiveness of the proposed mitigation. She said this was a generic problem for New Zealand lizards because it is very difficult to obtain the necessary data (i.e., robust estimates of population sizes) and response to management is largely unknown.
187. Dr Lettink agreed that most of the mitigation package if implemented effectively, could be beneficial to lizards and their habitats in Conical Hill/Te Tihi o Rauheha Reserve.
188. In terms of salvage and relocation Dr Lettink said that this in itself did not achieve "no-net-loss" in lizard values because it was rarely possible to capture all individuals present in the affected area, replacement habitats are rarely equivalent to those lost, and survival of relocated animals is not guaranteed. Notwithstanding these limitations, she agreed that salvage and relocation of Threatened and At Risk lizard species is appropriate and should be undertaken.
189. Dr Lettink agreed that indigenous plantings can create lizard habitat and restore linkages, and that a 1-ha planting of dense kānuka would be beneficial to rough

geckos in the Reserve. She also agreed that creating new rocky habitat will benefit Canterbury grass skinks, pygmy gecko, and northern Southern Alps geckos if the new rock habitats were positioned near existing rocky areas to permit colonisation by these species.

190. Dr Lettink agreed that control of woody weeds is not only beneficial but essential for maintaining new lizard habitats and rehabilitated areas and that this should be undertaken for the project's lifetime. She also said control of wasps was likely to benefit at least some lizard species in the Reserve and she said a multi-species predator control programme designed for lizards would be beneficial for lizards on Conical Hill/Te Tihi o Rauheha Reserve.
191. Finally, in terms of the possible establishment of at least one covenant to protect rough gecko habitat on private land, Dr Lettink said securing one or more covenant(s) to protect rough gecko habitat on private land would be a significant conservation outcome, particularly if the site(s) was managed in a way that allowed rough geckos to increase in abundance and/or distribution. This would likely have concomitant benefits to other native species and the protected habitat(s) generally.
192. Dr Lettink concluded her review stating that:

Considering the mitigation package in its entirety, I am of the view that there will be significant residual adverse effects if restricted to the proposed mitigation and remediation actions within the Reserve (Para 39, measures 1-4), and the rodent monitoring (measure 5) which is neither mitigation nor remediation). However, securing a sizeable covenant over an appropriate site that supports a viable population of rough geckos would alter my view.

(ii) Issues to be Addressed in the Right of Reply

193. As part of my fourth minute, I set out a number of matters I thought the Applicant might wish to address in the right of reply. These were:
- The noise and visual impacts on the amenity of residents and residential properties and mitigation measures proposed.
 - The noise and visual impact on the amenity and quality of the Conical Hill Reserve and its users.

- The impact of increased traffic movements and parking on residential amenity.
- The legality of the Acheron Heights access.
- Commentary on the effects on wildlife including:
 - Discussion/assessment in terms of Section 6c of the RMA;
 - The peer review of the Lizard Management Plan and whether changes are proposed;
 - A response to the issues raised about the breeding of eastern kārearea/falcons in the area and whether this changes any views expressed; and
 - The processes associated with the Wildlife Act, including the permits and the mitigation package.
- Whether any effects reach the threshold of significant and therefore trigger Cl 6(1)(a) of the Fourth Schedule of the RMA thus warranting consideration of alternative options, noting in particular that Dr Tocher in her summary evidence refers to a significance test being undertaken.
- Any response to matters raised in terms of the Reserves Act and the Reserves Management Plan.

194. I indicated that this was not an exhaustive list and that there were likely to be other matters the Applicant intended to address. I also sought that a set of agreed conditions be provided for me to consider should I be of a mind to grant consent.

Traffic Experts Joint Witness Statement

195. The three traffic experts provided a joint witness statement post the hearing. In it the available parking supply was identified and there was agreement that less than minor effects corresponded to less than 75% occupancy across either Oregon Heights, Conical Hill Road and Thomas Hanmer Drive on aggregate; or Acheron Heights.

196. The experts agreed in terms of monitoring that a parking survey should be conducted three times annually for two years by a qualified independent traffic engineer. The times should reflect a typical busy trading period, a typical peak trading period and a

public holiday peak trading period. The identified locations were to be evaluated through comparison of surveys of parking demand both before (baseline survey) and after the Flyride commences operation (post development).

197. The experts agreed that the trigger point for action to be taken was a 75% or greater parking occupancy on aggregate in the second year of monitoring. The second year of monitoring was considered to be more representative than the first year as initial demand may be higher than typical in year one due to the novelty aspect of the Flyride activity.
198. If the trigger point was met for Oregon Heights, Conical Hill Road and Thomas Hanmer Drive, the experts agreed that operating a shuttle bus and/or reducing the scale of the activity (i.e., peak ridership demand per hour) were appropriate mitigation measures to reduce parking demands. Providing a dedicated car park was also a potential mitigation measure but would need to be conveniently located to reduce on street parking demand. For Acheron Heights it was agreed that an appropriate mitigation measure would involve a review of the wayfinding plan and implementation of the plan to reduce the attractiveness of Acheron Heights.
199. If mitigation is required, then the experts agreed that the monitoring programme should be extended for a further minimum 12-month period beyond the implementation of any mitigation measure to assess effectiveness.
200. With respect to whether a pedestrian crossing was implemented across Conical Hill Road, Mr Smith and Mr de Verteuil (Mr Edwards was not involved in this part of the discussion) agreed any future requirement should be based on a 50% or higher parking occupancy of the Thomas Hanmer Drive portion of the monitoring area and that if provided it should take the form (at least) of kerb buildouts on both sides of Conical Hill Road and ideally be located just to the south of the intersection with Thomas Hanmer Drive to align with the pedestrian desire line as closely as possible.
201. In terms of the pedestrian access to Conical Hill reserve Mr Smith and Mr de Verteuil noted that the current design should be reviewed to take into account this application to ensure it was fit-for-purpose and integrated with the wider wayfinding for Conical Hill Reserve and the activity. They considered there may be alternative design solutions that would improve safety and be more direct and legible from the top of Conical Hill Road. Mr Smith was of the view that the pedestrian improvements

were required on safety grounds, are an integral part of the wayfinding scheme, and should be completed prior to the Flyride opening. Mr de Verteuil agreed that if the current design is altered to retain the existing access on Conical Hill Road and is more legible in terms of wayfinding, then the pedestrian improvements are supported prior to opening the activity. However, he considered it was unfair for the applicant to be penalised/delayed significantly if Council is not able to meet their programme.

Responses to LMP Peer Review

202. Dr Bower said the peer review raised a number of concerns for her. She said that the applicant had made no obvious effort to pursue the RMA's prescribed first option— avoid biodiversity loss – by investigating alternative sites; instead, they went straight to offsetting, which she said should not be a proposal's first option to manage biodiversity loss. She considered the Applicant should explore alternate locations before asking for a resource consent and wildlife permit that involved dislocating a population of endangered lizards and 3 populations of at risk lizards.
203. Dr Bower went on to say that there were limits to offsetting biodiversity loss, both in efficacy and appropriateness. She referenced a 2021 decision by the Panel in the Plan Change 18 process in the Mackenzie District which purported to say that offsetting was inappropriate for significant biodiversity and that it should only apply in relation to non-significant areas. She said this makes clear that avoiding adverse effects is the only option and that if avoiding is not possible, the activity must not proceed. Dr Bower also referenced a paragraph from the principal reasons and explanation to Policy 9.3.6 of the CRPS which refers to biodiversity offsets being the final step in a hierarchical process beginning with avoidance in the first instance.
204. Dr Bower considered the efficacy of any planned offsetting activities will be limited at best by the noted deficiencies in monitoring plans. She said she was less optimistic than Dr Lettink that a possible covenant would benefit the rough gecko or that it would come to fruition.
205. Having reviewed the LMP, Mr Cleary on behalf of FoCH said it was apparent that significant extracts, including in particular the assessment of effects on lizard population and habitat, should properly have been made available to all parties.

206. Mr Cleary submitted that Dr Lettink's quantification of residual effects differed markedly from Dr Tocher's assessment. Having referred to sections of the LMP, he went on to say that the acceptance of the significance of effects has implications for my decision as to whether or not consent should be granted. More specifically, he said the issue of whether or not alternative locations should have been considered comes squarely into focus.
207. Mr Cleary submitted that given the imperative of Clause 6 (1) of the Fourth Schedule of the Act regarding the consideration of alternatives, it was readily open to me to conclude that the Application was inadequate in its failure to consider alternative locations other than Conical Hill/ Te Tihi o Rauheia Reserve for the Flyride proposal and that such a requirement is not obviated by the existence or otherwise of a conservation covenant off-site.
208. Mr Cleary also submitted that the details of the proposed off-site conservation covenant were not known and therefore it was impossible for Dr Lettink (or anyone else) to fully evaluate the adequacy or otherwise of this approach towards the compensation of effects which further increased the difficulty of making a decision.
209. Ms Bewley said having considered all information presented at the hearing and the peer review of the LMP, she agreed that the proposed Flyride footprint was a significant habitat of indigenous fauna under section 6(c) of the RMA. She went on to say that in considering whether the proposal was likely to generate significant adverse effects on lizards on site, it was pertinent to firstly determine whether it is appropriate to consider the proposed off-site covenant when assessing whether adverse effects are "significant" given Dr Lettink's conclusion. She also agreed with Dr Lettink that the proposed covenant was compensation, rather than mitigation.
210. Ms Bewley considered that the installation and operation of the Flyride would cause a significant adverse effect and that the proposed off-site covenant was separate from that and therefore the correct approach was to assess adverse effects on lizards on site without considering the proposed offsite covenant. Therefore, she considered that the proposal, based on Dr Lettink's assessment, would trigger clause 6(1) of the Fourth Schedule of the RMA and therefore a description of alternative locations or methods for undertaking the activity must be provided.

211. Dr Tocher provided a response to Dr Lettink's peer review in which she said Dr Lettink's conclusion was consistent with an assessment made by DoC on August 6, 2021, conveyed during a meeting convened as part of the process of assessing the application for Wildlife Act permission to construct and operate the Flyride. She went on to address the three areas of concern identified by Dr Lettink, with which she agreed, and explained what course of action would be undertaken on all issues raised.
212. In terms of the conservation covenant which Dr Lettink considered vital in the LMP mitigation/compensation package to fully address adverse effects and result in no net loss of lizard values, Dr Tocher advised that appropriate land for a QEII conservation covenant (with management plan) over rough gecko habitat on private land had been identified and she understood that an agreement was expected to be signed. She said it would be the first QEII covenant for Rough Gecko ever created on private land and noted that securing the covenant was the only remaining outstanding task that when secured, will allow DoC to issue a Wildlife Act permit to construct and operate the Flyride, subject to approval from their treaty partners.
213. Dr Tocher said that the covenanted rough gecko habitat was at least twice as large as the entire Flyride footprint, and more than three times the area of rough gecko habitat affected by the Flyride project. She noted that the covenant would be applied over a site where rough geckos are known to exist as a viable population, but which is vulnerable to habitat clearance, and at a site linked to a wider rough gecko population on public conservation land.
214. On the matter of compensation versus offset, Dr Tocher said that the QEII covenant and its management were never proposed as an offset because offsets are not possible to achieve for lizards. She went on to detail the reasons for this. The lack of adherence to at least three Business and Biodiversity Offsets Programme (BBOP) principles ruled out the appropriateness of an offset in the case of the Flyride lizard values. Dr Tocher said she had used biodiversity compensation as an appropriate mechanism to address residual adverse effects that cannot be avoided, remedied or mitigated. As a compensation offering, she noted that the QEII covenant and the implementation of its management plan may or may not fully address residual effects following her rigorous application of the RMA mitigation hierarchy; there really was no means of knowing with certainty, but her opinion was that it does, and then some.

She said that DoC, in their assessment of the LMP and the mitigation/compensation package within, and Dr Lettink, concur with this view.

215. Dr Tocher discussed the adherence to DoC salvage principles, with which she was very familiar having been directly involved in their development. She said that in terms of the nine principles it was rarely possible or even appropriate to fully adhere to them all and that in the case of the Flyride she crafted a bespoke LMP with the explicit goal to:

“manage the lizard values of the Switchback footprint to achieve an overall positive outcome locally, post works, i.e., populations of the four species of indigenous lizards found over the footprint and adjacent areas are expected to be the same or enhanced following successful implementation of the mitigation package relating to the project.”

216. Dr Tocher said that salvage was not a primary action to achieve the aforementioned goal, but rather an action considered worthwhile for the two most threatened species. In other words, salvage was “the cherry on top” of the package, a term used by DoC when assessing sufficiency of such packages against the salvage principles.
217. Dr Tocher went on to discuss three of the principles that Dr Lettink had said were only partially met. In this context she agreed that further explanation in the LMP would help better understand the role of lizard salvage in the overall package. She provided additional commentary and clarity on the correct application of Principle 3 (Alternatives to moving lizards) along with the documented avoidance and remediation actions in the LMP, and known lizard values on surrounding hill-country. She concluded that Principle 3 has been applied when crafting the Flyride LMP mitigation/compensation package, and no changes were required to the LMP.
218. In terms of Principle 5 (Lizard salvage, transfer and release must use the best available methodology), Dr Tocher agreed that some revision to the LMP relating to the homing of the rough gecko were required to state that no rough geckos are to be released within 100m of their capture site within the Flyride footprint. For the Canterbury grass skink changes to the LMP were to be made in relation to the release site and the need to include signage in and around the release pen, the enlarging of the pen and rock habitat, and specifying how the construction of the pen fence will avoid creating adverse effects on any resident Canterbury grass skinks.

219. In relation to Principle 6 (Receiving sites and their carrying capacities must be suitable in the long-term), Dr Tocher was of the opinion that the concerns raised by Dr Lettink had been appropriately addressed and noted that the LMP would be revised to include the requirement to provide a low stature amenity fence to further safeguard Canterbury grass skink release habitat.
220. On the matter of post-release monitoring (Principle 7), Dr Tocher agreed that it was not given effect in the LMP. She maintained that post-release monitoring was not appropriate or useful for the Flyride LMP and that her position was not challenged by DoC nor conflicted with Dr Lettink's views on this principle. She said the only feasible method to get information on the fate of any salvaged and released rough geckos, involved fitting animals with radio-transmitters which was intrusive and posed survival risk to the animal. Post-release monitoring of the Canterbury grass skink posed a different suite of challenges in terms of the inability to reliably identify individual skinks.
221. Dr Tocher referred to the new threat rankings that came out early October 2021 (after the hearing). She noted that Dr Lettink had considered the elevated threat rankings for three of the four lizard species impacted by the Flyride project when forming her view that the LMP mitigation/compensation package was sufficient to address anticipated effects. Dr Tocher was of the opinion that the LMP was not materially affected by updated threat rankings and should therefore stand as is and she noted that neither Dr Lettink nor DoC recommend revision to reflect the new threat classifications.
222. Finally, Ms Tocher confirmed her opinion that in the absence of appropriate avoidance, remediation, rehabilitation, mitigation, and compensation, the Flyride would generate significant adverse effects on the lizard values of the footprint. However, she considered the acquisition of the QEII covenant and implementation of the related management plan over high-quality rough gecko habitat more than addressed these residual effects and, as a result, there would be no significant residual effects after the Flyride LMP mitigation/compensation package is effectively implemented in its entirety.

Applicant Right of Reply

223. As part of the Applicant right of reply I received a response from Dr Tocher on the 15th of November 2021. In that she provided the technical information and clarification for some remaining ecology matters.
224. The first of those related to the NZ Falcon/Kārearea where Dr Tocher said she accepted, based on photographs provided by Mr Martin, that nesting has occurred within the Te Tihi o Rauhea/Conical Hill Reserve, and she maintained that it could occur in the future.
225. Dr Tocher went on to address the effects on the NZ Falcon/Kārearea, where she said that in the absence of appropriate mitigation, the Flyride may generate significant adverse effects on birds that frequent the footprint. However, in her opinion implementation of her recommendations, which she said go further than those favoured by DoC, through consent conditions would ensure that any adverse effects on the NZ Falcon/Kārearea that frequent Te Tihi o Rauhea/Conical Hill Reserve will be negligible (i.e., no more than minor).
226. Dr Tocher also provided some commentary on the typical process undertaken for DoC to issue a Wildlife Act permit, to carry out works over lizard populations. She said the trigger to require a permit is the presence of a single indigenous lizard, regardless of the threat classification, as all indigenous lizards are absolutely protected under the Wildlife Act (1953). She noted that in this way the Wildlife Act sets a higher bar than Section 6(c) of the RMA, because even lizards that are not threatened are covered. She went on to say that the application process requires a LMP including a thorough lizard survey and that the LMP template requires that avoidance and mitigation actions are documented.
227. Dr Tocher said the template then promotes the development of a cohesive package of mitigation actions, rather than strict adherence to any hierarchy of actions as is required by the RMA. She said that LMPs, as a result, can sometimes be out of step with an RMA-led process. Feedback from a DoC advisor is also able to be sought for near completed LMP's. Once lodged the application is assessed by DoC staff and there is a requirement that the mitigation package, once implemented, results in a demonstrable protective benefit to the lizards affected. Discussion may occur on modifications/revisions required to ensure a protective benefit will result from the

LMP implementation and the final version is required to be provided to affected iwi for feedback which may necessitate further revision to meet their expectations before a permit is issued.

228. I received the full Applicants right of reply on the 13th of December 2021. In that Ms Appleyard addressed a number of matters which are summarized below:

- The RMA is not a “no effects” statute.
- Some submitters introduced themselves by reference to their qualifications, then proceeded to proffer opinion. These submitters did not agree to comply with the Code of Conduct, and acknowledged they were presenting as lay people. It is submitted that little evidential weight can be given to these submissions.
- Many submitters were concerned about effects that – on the expert evidence are not expected to materialise. Considerably more weight should be put on the opinions expressed by experts particularly so where submitters have an inherent interest in the outcome.
- Notwithstanding the above, submitters’ views should not be discounted and are relevant to the considerations including the identification of what comprises the amenity values of the area that are appreciated by them; how, in their view, the Project could affect those amenity values; and how, if adverse (in the sense of comprising a change to the current values enjoyed), it is considered those adverse effects might be mitigated.
- Modelling indicates the Flyride will create 23 new jobs and inject \$4 million into the local economy in its first five years, and it cannot be seriously disputed that the Flyride will bring economic benefits to the region.
- The proposal will ensure Conical Hill receives much needed ongoing investment, and in the longer term will enable lizard populations to be maintained at higher levels than observed presently.
- The noise modelling provides a ‘worst case’ scenario. The use of conservative modelling means that in almost all situations, noise impacts will be even lower than predicted.

- Baseline noise is often higher and more frequent than noises associated with the Flyride is expected to be. The evidence is that there will be a “just noticeable” average noise level change.
- It is submitted that the slowing of the Flyride over the final two spans and the proposed conditions for the management and monitoring of noise associated with the construction and operation of the Flyride are appropriate. These measures will ensure that the concerns raised by the submitters are appropriately managed, and that the effects will be reasonable. The same applies for the generator’s compliance with the District Plan requirements.
- Many of the visual effects of the Flyride can be remedied or mitigated over time, by “softening and settling” the area through revegetation landscaping. Proposed conditions will require planting between T7 and the stop station and the site boundary to the south. This includes the area between the stop station and the nearest residential properties.
- It was submitted that the proposed landscaping conditions, in combination with the well-considered design of the Flyride, appropriately address the visual impacts on residents, the Conical Hill Reserve and its users. The effects will be reasonable and appropriately managed.
- In terms of traffic and parking it was submitted that the comprehensive monitoring conditions, along with a s128 review condition, will identify and address parking related effects and provide confidence that parking related effects on residential amenity will be no more than minor.
- HSTPS strongly refutes that it seeks to “oust” my jurisdiction, as asserted by FoCH. It was submitted that I am entitled to turn my mind to whether there are other authorisations and/or others with specific expertise and satisfy myself that legislation exists and will appropriately manage effects.
- There is agreement that the Flyride site contains significant habitat of indigenous fauna (lizards and falcons), and these are to be protected in terms of section 6(c) of the RMA and also the CRPS and District Plan.
- Although the Flyride site has lizard values that meet the section 6(c) criteria, it is relevant that the rough gecko habitat is considered small, highly modified (unnatural), and already disturbed (by the public). In the longer term,

implementation of the LMP is anticipated to enable lizard populations (including the rough gecko population) to be maintained at higher levels than observed without the Flyride.

- The Department of Conservation is aware of the Flyride proposal as a result of the wildlife authorisation process. Despite this awareness, they did not make a submission. It can therefore be assumed that they do not have concerns relating to the proposal (or they consider any concerns are best directly addressed through the processes under the Wildlife Act 1953).
- An agreement has now been entered into with a landowner for a 6 ha QEII covenant over private land that is otherwise unprotected. The covenant will be the first ever established on private land for rough gecko and is anticipated to provide habitat for Southern Alps geckos and possibly pygmy gecko.
- The QEII covenant is being offered as “biodiversity compensation”, rather than an “offset”. It is submitted that although the term “biodiversity compensation” is not explicitly provided for in the District Plan or CRPS, both planning documents envisage the use of compensation for residual adverse effects following appropriate avoidance, remedy and mitigation, and where the compensation offered will achieve no net loss.
- As a matter of law, compliance with conditions of consent must be assumed.
- HSTPS strongly refutes any suggestion that it will not comply with the wildlife permit. The wildlife permit will include conditions that must be complied with. Any failure to comply with a condition on which the permit is granted is an offence against the Wildlife Act 1953.
- To address concerns HSTPS has offered a further condition to require a QEII covenant to be entered into. That covenant will also be a requirement of the wildlife permit (DOC have advised they will not grant the permit without it). HSTPS has also offered a condition requiring all works on site to comply with the wildlife permit.
- In terms of the consideration of alternatives issue and whether clause 6(1)(a) (of the RMA) is triggered by a finding that there are significant adverse effects and within that whether the QEII covenant should be taken into account, HSTPS submits that the protection provided to rough gecko through the QEII

covenant is an intrinsic part of the proposal: the Flyride will not happen without the QEII covenant; and the QEII covenant will not happen without the Flyride. This is made explicit by the proposed condition of consent requiring a QEII covenant.

- Dr Tocher considered various alternative methods and her recommendations have all been accepted by the Applicant. These include avoidance of lizard habitat; alternative routes to access towers; use of known contractors to construct the Flyride; frequent tree maintenance on the track and around the towers to stop rough gecko's taking up residence; use of 'exclusion zones' of potential lizard habitat to be fenced off prior to works commencing; use of a qualified arborist to remove trees; undertaking lizard salvage within 10 days of commencement of works; the rehabilitation of affected areas with only eco-sourced indigenous plants suitable as habitat for rough gecko and/or Canterbury grass skinks; and best practice methodology to be followed during the salvage and release program.
- As Dr Tocher has explained, rough geckos are known to reside on a number of hills in Hanmer Springs. Indeed, she said nearby hills are likely to have "*even better lizard values to Conical Hill*". HSTPS is not aware of another location in Hanmer Springs where a more appropriate site would exist.
- In essence, provided the proposal is consistent with the sustainable management purpose of the Act, little weight should be given to the question of alternatives. It is submitted that the issue of alternative locations does not weigh against grant of consent.
- The RMP contemplates commercial recreational activities that "*enhance recreational use of the reserve and [are] considered to benefit the community*". The evidence is that the Flyride proposal will do just that.
- The Flyride proposal will vastly improve the standards of maintenance at Conical Hill, while complementing the role of Hanmer Springs as a developed tourism destination and utilising the existing recreation values on the Conical Hill track.
- It is acknowledged that the values attributed to Conical Hill by submitters are genuinely held. Without detracting from that acknowledgement, the reality is that Conical Hill is already visited by over 50,000 people per year. The

evidence is that there will be a “just noticeable” average noise level change and all of the essential features of the Conical Hill walkway will remain.

- In terms of the design improvements to pedestrian access to Conical Hill Reserve, HSTPS’s position is that the requirement is not practicable nor necessary.
- It is considered unnecessary to require the QEII covenant be in place prior to exercise of the consent. Such a requirement could delay the project by up to two years and is considered disproportionate and not justified given no lizards are being transferred from Conical Hill to the off-site covenant. Any lizards salvaged from the project footprint are to be released into suitable habitat nearby (i.e., within the Conical Hill Reserve). Further, DoC does not require the covenant to be in place prior to works commencing.

Hearing Closure

229. Having reviewed the LMP peer review and associated responses and the right of reply I closed the hearing on the 23rd of December 2021.

DISCUSSION

Statutory and Planning Context

230. I am required to consider the matters set out in sections 104(1) (subject to Part 2) and 104B of the Act, given the application is a discretionary activity. As a discretionary activity there are no restrictions, and I am able to consider all aspects of the proposal. Relevant to this case, the s104 matters include:

- any actual and potential effects on the environment of allowing the activity; and
- any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity
- any relevant provisions of the district plan, national environmental standard, national policy statement or regional policy statement; and

- any other matter we consider relevant and reasonably necessary to determine the application.

231. In making my decision, I am able to impose conditions under s.108 should I decide that consent can be granted.
232. I accept Ms Appleyard's submission that the relevant planning documents have been prepared in accordance with Part 2 of the RMA and consideration against those relevant plans was therefore the primary framework for assessing the Application. In this context I note that the District Plan is relatively recent, and I therefore consider there is no need for a full detailed assessment under Part 2.
233. For the record I noted that there are s6 (RMA) matters of national importance at play here however I do not consider there are any s8 (RMA) Treaty of Waitangi matters associated with the proposal that I need to consider.

Permitted Baseline

234. I am able to disregard any adverse effect of an activity on the environment if the District Plan permits an activity with that effect in accordance with s.104(2) of the Act (known as the 'permitted baseline'). In this context Ms Whyte considered it appropriate to apply the permitted baseline. In this context she said while the proposal did not meet all of the permitted activity standards, it was not fanciful to consider that another recreation proposal, including a commercial recreation proposal, could establish as of right.
235. Ms Barker on the other hand disagreed that a commercial recreation activity could likely establish within the Conical Hill Reserve as of right. She said under the District Plan car parking and natural hazard rules would almost certainly be breached, and noise and design standards may also be difficult to meet with respect to any commercial recreation activity of a comparable nature and scale. She also pointed out that Ms Whyte had not identified a specific example of another commercial recreational activity that might seek to establish within this reserve, which shows that there is no valid alternative against which to test whether the permitted baseline is appropriate.
236. I tend to agree with Ms Barker's point that there are no valid alternatives against which to test whether the permitted baseline is appropriate. There was no evidence

provided to that effect and I agree that in any event there would likely be rules breached. In this context I note that even the proposed toilet breached design rules. I have therefore decided that the permitted baseline is of no relevance to my considerations.

Consideration of Alternatives

237. The issue of alternative options was raised by submitters and witnesses at the hearing and traversed in the post hearing correspondence.
238. The consideration of alternative options is mandated in Cl 6(1)(a) of the Fourth Schedule of the RMA where an activity may result in significant adverse effects on the environment. The initial test, therefore, is are any of the adverse effects of the proposal significant.
239. Ms Barker considered there were potential significant noise (in relation to Conical Hill Reserve), residential amenity and possible indigenous biodiversity effects as a result of the proposal. Ms Whyte on the other hand said that this was not a proposal where any significant adverse effects on the environment were identified and therefore there was no requirement to describe possible alternative locations or methods. Ms Bewley considered that the proposal, based on Dr Lettink's assessment in terms effects on lizards, would trigger clause 6(1) on the basis that the adverse effects on the lizards should be undertaken without considering the proposed offsite covenant. Ms Appleyard, in the right of reply submitted that the protection provided to the rough gecko through the QEII covenant was an intrinsic part of the proposal in that the Flyride would not happen without the QEII covenant; and the QEII covenant will not happen without the Flyride.
240. Firstly, for the reasons outlined below I do not agree that the adverse effects associated with noise and residential amenity reach the threshold of significant. In short there is simply no evidence to support that proposition.
241. I accept however that the residual adverse effects on lizards on its own reaches the level of significant as referred to by Dr Lettink, who went on to say that securing a sizeable covenant over an appropriate site that supports a viable population of rough geckos would alter her view². The question then becomes whether or not the QEII covenant can be considered as a part of the overall proposal.

² Paragraph 57 of Dr Lettink's peer review

242. At the stage of hearing itself the QEII covenant over private land, while mentioned in the evidence summary of Ms Tocher, where she said "*pleasing progress has been made to secure a 4-5 ha QEII covenant*"³, was not secured. My understanding now from the right of reply is that an agreement has been entered into with a landowner for a 6 ha QEII covenant. Further, the proposed conditions of consent now require a QEII covenant to be created and registered. My understanding is that the covenant will also be a requirement of the wildlife permit as DoC have advised they will not grant the permit without it.
243. In my view these changes close a loop and mean that the QEII covenant is inherently linked to the application. In other words, as stated in the right of reply the Flyride will not happen without the QEII covenant; and the QEII covenant will not happen without the Flyride. On that basis and taking into account the evidence of Dr Tocher and Dr Lettink, I consider that the threshold of significant is not met and therefore there is no requirement to undertake a consideration of alternative options.
244. Finally, while not of great relevance I do note that Dr Tocher stated that the widespread and broad habitat-use of rough gecko and other lizard species of the footprint (based on records in DoC Herpetofauna database and her experience on-the-ground), means other hills in the vicinity of Conical Hill would likely have similar or even better lizard values to Conical Hill⁴.

Initial Comments

245. Before assessing the effects on the environment, I consider it appropriate to comment on a few of matters that were raised during the hearing.
246. The first is around the consultation, where submitters raised concerns around the consultation process or in some cases lack of it. In terms of what is required by the RMA, the Fourth Schedule and specifically clause 6 (1) requires that the assessment of environmental effects include the following:

(f) identification of the persons affected by the activity, any consultation undertaken, and any response to the views of any person consulted

247. Clause 6 (3) then states:

³ Paragraph 49 of Ms Tocher's evidence summary

⁴ Paragraph 46 of Ms Tocher's response to peer review of LMP

To avoid doubt, subclause (1)(f) obliges an applicant to report as to the persons identified as being affected by the proposal, but does not—

(a) oblige the applicant to consult any person; or

(b) create any ground for expecting that the applicant will consult any person.

248. Having reviewed the application which includes a section on consultation and what occurred, I consider this requirement has been met and further I note that the application sought for the proposal to be notified which is a further form of consultation.
249. The second concerned rule breaches and the number of them. The rules breaches are triggers to assessments at various levels depending on the status the rule breach falls into; they are not in themselves a reason to decline an application.
250. Finally, there were comments made during the hearing that the proposal had split the community and that more people were opposed than in support and vice-versa. I want to make the point here that while this might be something for the Applicant to reflect upon, the numbers opposing and/or supporting the proposal are not a determinative factor in terms of my considerations and decision.

Actual and Potential Effects on the Environment

251. It is acknowledged that “amenity values” are defined in the Act as meaning ‘*those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*’ As such any assessment of amenity values is in many respects subjective.
252. The key effects of the proposal I consider are generally aligned to those outlined by Ms Bewley and relate to ecological effects, visual amenity and privacy, noise, traffic generation and parking, amenity and character of Conical Hill and public access. I have also considered other matters that were raised during the process including heritage values, fire risk, natural hazards, and property devaluation, and I have considered the positive effect of the proposal. These are assessed in turn below.

Ecological Effects

253. The impact on the NZ Falcon/Kārearea and the four species of skinks and geckos were a key issue associated with the application.

254. From the evidence received I accept that the NZ Falcon/Kārearea is present in the area of the proposed Flyride and that it appears highly probable based on the observations of the Rodley's that it has been nesting in the area. I agree therefore that without acceptable mitigation, the Flyride could generate adverse effects on birds in the locality of its footprint.
255. The Applicant proposes two conditions in relation to the NZ Falcon/Kārearea. One requiring a pre-works walk-through of the footprint prior to construction works and a suite of measures if breeding behaviour is observed and/or scrapes/nests are located. The second relates to the operation of the Flyride and requires reporting on any evidence of near misses, injury and/or mortality of NZ Falcon/Kārearea through interaction with infrastructure or riders associated with the activity.
256. Dr Tocher considered that implementation of her recommendations (which have been captured in the conditions) would ensure that any adverse effects on the NZ Falcon/Kārearea that frequent Te Tihi o Rauheua/Conical Hill Reserve will be negligible (i.e., no more than minor). She also said that her recommendations go further than best practice for forestry operations and those favoured by DoC when formulating their conditions.
257. Based on the above I am satisfied that the potential effects on the NZ Falcon/Kārearea have been appropriately addressed.
258. Turning to the impact on gecko's and skinks and the associated LMP, I acknowledge that this is a particular specialist area and I accept that both Dr Tocher and Dr Lettink are experienced herpetologists.
259. The proposal involves clearance of vegetation along the alignment of the Flyride and the siting of poles within the footprint with start and stop stations at each end. The overall Flyride footprint in the context of Conical Hill is therefore relatively small. Notwithstanding this, I accept that gecko's and skink's, including the threatened nationally endangered Rough Gecko will be adversely affected by the proposal. I also accept that as a result, a high level of mitigation is necessary to overcome those effects which both Dr Tocher and Dr Lettink describe as significant residual effects without such mitigation.

260. The Applicant via Dr Tocher has provided a mitigation package involving the development of an LMP. In her approach Dr Tocher was careful to explain that she had sought first to avoid adverse effects, then remediate/rehabilitate for effects that could not be avoided, and then mitigate remaining adverse effects. She said lastly that compensation in the form of a QEII covenant and its management plan was put forward to address any residual effects not adequately provided for by avoid, remedy and/or mitigation actions.
261. Based on the information provided at the hearing by Dr Tocher and the peer review undertaken by Dr Lettink I accept that the LMP, as revised, is detailed and thorough and covers all the necessary mitigation aspects. I also acknowledge that the governing body for the wildlife approval, DoC, will be responsible for ultimately approving the LMP, and for monitoring and compliance and I accept that they have considerable experience in the conservation of wildlife.
262. Furthermore, I accept that the process of obtaining a permit under the Wildlife Act is comprehensive and, in some respects, likely to be more onerous than the RMA process. My understanding is that it requires extensive input from experts in their field and it seems to me that there are various checks and balances in that process, including Iwi consultation. I also note that without the Wildlife Act permit the project will be unable to proceed.
263. One outcome therefore, which is tied into the proposed conditions, could be that the wildlife approval is not obtained and as a result the Flyride is unable to proceed. On the other hand, given their experience, if approval for the LMP is obtained I consider it is reasonable to assume that DoC will have undertaken a thorough job in its assessment and are comfortable that the outcomes of the LMP will be achieved.
264. In terms of the proposed QEII covenant area, I acknowledge that 6ha of protected rough gecko habitat is significantly larger than the area of rough gecko habitat affected by the Flyride project. While I agree that this is compensation rather than an offset, it will nevertheless be, as Dr Lettink said, a significant conservation outcome which is associated with the proposal. In other words, without the proposal the QEII covenant and the protection it provides would not go ahead.
265. On the basis of the now extensive evidence provided on the adverse effects of the Flyride on geckos and skinks and how these effects are to be mitigated as a whole,

which includes the QEII covenant, I am satisfied that this matter has been appropriately addressed to the point where effects can be considered no more than minor. I am also reassured by the fact that the LMP will be assessed by, and require the approval of, DoC through the Wildlife Act application process.

Visual Amenity and Privacy

266. Visual amenity effects and loss of privacy associated with the proposal were a further key issue for submitters and related primarily to the visibility associated with Pole 7 and the stop station from residential properties on Oregon Heights. There was also some concern in this regard associated with parking.
267. The steel poles associated with the Flyride will have a light reflectance value of less than 10% and will be either dark grey, green, or brown in colour so as to ensure that they will be recessive in the landscape and largely blend in with the existing trees on the hillside. I agree with Mr Milne that the proposed colour and light reflectance values will to a large extent mitigate landscape character and visual effects associated with the poles, including Pole 7.
268. The stop station is an elevated structure when viewed from below but will be under 8m above existing ground level. It is a relatively modest structure in terms of scale and appears to be of a design (including colour) sensitive to its surrounding landscape. Foot traffic from the station is directed away from the residential area below back towards the Conical Hill track.
269. I accept that as the existing and proposed revegetation planting in this area becomes established adverse effects on the visual amenity and privacy of nearby dwellings will be reduced to a negligible level as the platform will become nestled amongst the establishing native planting and it will become visually screened from most locations.
270. The primary adverse effect therefore is one of a temporary nature until the revegetation is established. I accept that the foreground area where the trees have been removed and revegetation has begun will for some time remain somewhat open and there is as a result a level of visual effect. The visual assessment assessed these effects as moderate from the closest viewpoint (viewpoint 9 which is further down Oregon Heights) which equates to a more than minor effect.

271. There is approximately 50-55m between Pole 7 and the stop station and the residential boundary and slightly further to the two closest dwellings. At this distance both will initially be visible to the closest dwellings, even if somewhat recessive due to colouring, and will portray as built form structures within a largely vegetated, albeit weed infested, area. Users of the Flyride are also likely to be visible given the elevation provided by these structures.
272. Mr Milne stated that proposed kanuka planting in this area would take around 6 years to reach a full screening height. In the interim however I consider there would be adverse effects (both visual and privacy) which will begin as more than minor but progressively diminish as the revegetation grows.
273. Having reviewed the landscape conditions, I consider this situation could be improved by requiring planting in the area of the residential boundary to occur within the first planting season following the approval of the landscaping plan rather than at the completion of project construction, with the landscape plan having to be approved prior to any construction works beginning. While I accept that some landscaping will only be able to occur post construction, that is not in my view the case with the landscaping adjacent to the residential boundary. By ensuring that it occurs at the earliest possible time will ensure that the visual and privacy effects are mitigated earlier.
274. Notwithstanding the above, I note in terms of the issue of privacy that an existing pathway runs between the proposed stop station and the residential boundary which links the Conical Hill track with Lucas Lane track. From a privacy perspective therefore, there is already an element of human activity occurring in this area.
275. In terms of the potential privacy loss as a result of car parking and increased people on the street, I do not consider this to be an effect that is more than minor, indeed in my opinion it is a negligible effect. On-street parking and people walking on footpaths at the upper end of Conical Hill Road can occur at any time with or without the Flyride. While I accept that the proposal would result in an increase in the number of people on the streets in this area these are public roads, and the on-street parking and footpath use is not exclusive to residents.

Noise

276. The primary noise issue is not atypical in that it relates to vocalisation. I acknowledge that such noise is unusual in the context of environmental noise assessments and that there is a limited amount of data and, arguably, no single 'correct' determination of noise source levels. It also seems clear to me that variation in noise between individual users of the Flyride are likely to be significant i.e. from screams/yelps to silence.
277. In order to assess the noise impact Dr Trevathan had used the LAFmax level in the context of the ambient environment rather than District Plan noise limits, as he considered this was more appropriate and in line with WHO guidance and other literature. As I understood it the other noise experts agreed with this approach.
278. The noise experts, which included Mr Hunt, were agreed that a condition be imposed requiring that the Flyride not exceed 45 dB LAFmax at any point within any residentially zoned site and to monitor any actual or potential noise related effects associated with the Flyride. Mr Hunt said, 'this is a low level of sound and would provide a good standard of protection against adverse noise effects within any residentially zoned site', while Mr Walton considered it provided 'an acceptable balance between maintaining residential amenity and enabling development but would expect noise effects to be minor or less than minor at the closest dwellings.' Mr Walton also indicated that the modelling undertaken would be considered conservative which would mean that in most circumstances the noise impacts will be lower than those predicted. On the basis of the above I accept that 45 dB LAFmax is an appropriate noise limit to adopt.
279. The experts also agreed on the provisions of a Noise Compliance Measurement & Assessment Plan which would include recommendations relating to appropriate processes for monitoring noise levels once the activity commenced.
280. The evidence of Dr Trevathan was that noise effects would be minimal at dwellings and outdoor areas, where sounds from riders would not typically exceed 45dB LAFmax. Nevertheless, he proposed that the design and operation of the final two spans of the Flyride (7 & 8) be managed (by slowing the ride down) to limit loud noises so as to not to exceed 45 dB LAFmax in this area.

281. In this context I note that this level is well below the District Plan night-time limit of 75 dB LAFmax. Further, there is no daytime LAFmax level in the District Plan however it would likely be higher than 75 dB LAFmax if there were.
282. While I accept that residents might well hear participants on the Flyride, the evidence from the noise experts is that if the 45 dB LAFmax is achieved it will protect against any adverse noise effects. On this basis I am satisfied that the noise effects from the Flyride on residents in Oregon Heights will at worst be minor.
283. In terms of the Conical Hill summit and nearby pathways Dr Trevathan said that up to 65 dB LAFmax was expected over a small portion of the walkway but would reduce to 45 dB LAFmax due to terrain shielding. He said that walkers on the pathway were often exposed to higher and more frequent noise events, associated with other users on the track with up to 75 dB LAFmax experienced over a small portion of the 'cross-town' link.
284. Again, the levels of noise predicted in association with the Flyride at the Conical Hill summit and nearby pathways are likely to be heard however in my view they seem reasonable in the context of noise already being experienced in the Conical Hill environment.
285. Overall, I consider that the measures proposed in relation to noise, including monitoring will ensure that the concerns raised by the submitters are appropriately managed, and that the effects will be no more than minor.

Traffic Generation and Parking

286. Traffic generation and parking was a key concern of a number of submitters, and I acknowledge that there is a degree of uncertainty around the level of traffic generation and parking associated with the proposal. It was clear however that the streets most likely to be affected by increased parking were those around the upper part of Conical Hill Road.
287. No dedicated parking is proposed in association with the Flyride. However, I note that this is consistent with the current use of the reserve in that there is no dedicated car parking available for walkers using the Conical Hill walking track.

288. I accept there is a likelihood that a percentage of Flyride users will seek to park close to the beginning of the Conical Hill track but that others will choose to walk. In this context this is no different from what those currently accessing the Lookout currently do. I agree with Ms Barker's contention however that there would likely to be direct effects on residents' amenity as a result of any substantial increase in on-street parking and corresponding increase in people as a result of the Flyride. The question to be answered though is what is the threshold where those effects reach a point where they could be considered unacceptable. This was addressed by the traffic witnesses.
289. As part of the application process survey work on peak parking demand in the upper Conical Hill Road area had been undertaken over a busy weekend in 2021 by Mr de Verteuil. He had concluded that this was not an environment constrained by existing parking and that there was sufficient space available to accommodate the peak demand projected for the Flyride. Mr Smith considered the reliance on the current on street parking supply was generally acceptable. However, he considered there was a risk that parking demand would be exceeded at peak times, which if it occurred increased the likelihood of adverse effects. He recommended that the parking occupancy on those local streets be monitored to provide an assessment of the extent to which additional parking was required.
290. Mr Edwards for his part considered there were significant shortcomings in the analysis of Mr de Verteuil in relation to the potential on-street parking effects of the proposal which he had outlined, however he said he did not oppose to the proposal.
291. The three traffic experts were asked to confer and as a result provided a joint witness statement. Having identified the available parking supply they agreed that less than minor effects corresponded to less than 75% occupancy across either Oregon Heights, Conical Hill Road and Thomas Hanmer Drive on aggregate: or Acheron Heights. They also agreed in terms of monitoring that a parking survey should be conducted three times annually for two years and that the times should reflect a typical busy trading period, a typical peak trading period and a public holiday peak trading period.
292. The experts agreed that the trigger point for action was a 75% or greater parking occupancy on aggregate in the second year of monitoring and that operating a

shuttle bus and/or reducing the scale of the activity were appropriate mitigation measures to reduce parking demands.

293. The traffic expert's conclusions above have been translated into proposed conditions. Having reviewed their assessments, the joint witness statement, and the proposed conditions I am satisfied that there are mechanisms in place to ensure that if parking demand reaches a minor or more than minor threshold (being 75% or above occupancy of available spaces on the streets concerned) then there are potential solutions available, and the Council has the ability to ensure any such solutions are implemented.
294. In addition to the above, Mr Smith had also recommended that a Wayfinding Plan be prepared including signage so as to encourage the use of the Conical Hill Road access to the Flyride and discourage the use of private accessways, Lucas Lane and Acheron Heights. The traffic experts agreed that for Acheron Heights an appropriate mitigation measure if the parking occupancy threshold was breached was to review the Wayfinding Plan and implementation of the plan to further reduce the attractiveness of Acheron Heights. I accept that this is an appropriate approach to address this particular matter.
295. On the basis of the above, I agree that the car parking aspect itself associated with the proposal has been appropriately addressed and that there are robust mechanisms in place to ensure that should parking occupancy reach a point where it is creating unacceptable effects then action can be taken.
296. In terms of the broader amenity effects associated with car parking, such as noise and privacy, I consider they run with the threshold that has been set for the consideration of alternative solutions where adverse effects associated with car parking occupancy has reached a tipping point. After all these are all public streets where people are legally able to walk and/or park.
297. Finally, on the matter of upgrading pedestrian access to Conical Hill reserve my understanding is that it is programmed to be delivered by Council in the 2021/22 financial year i.e., this year. I therefore see no reason to have a condition requiring it to be completed prior to the Flyride activity beginning.

Amenity and Character of the Conical Hill Reserve

298. The issue of the ongoing amenity of the Conical Hill Reserve was a matter raised by a number of submitters. This was perhaps best articulated by Mr Carter who described the special importance to the Hanmer Springs community of Conical Hill and allowing walkway users to enjoy a pleasant and tranquil experience.
299. While noting that the issue is connected to matters addressed earlier in my assessment, I have considered this issue further and note that Mr Greenaway and Mr Milne addressed this matter.
300. Mr Milne was of the view that the effects on the natural amenity of Conical Hill would be low or in other words no more than minor, however he considered the proposal would have moderate (or more than minor) adverse effects on the tranquillity of the hilltop lookout area which he said were attributed to the proximity of the start station and first pole, which would become a hub of activity associated with the ride.
301. Mr Greenaway considered the placement of the start station away from the tracks to the summit, along with the walking tracks and the view from the summit being the main visitor experiences, meant that the Flyride would not 'dominate' the area. He also said that users of the walking track may experience a step change in activity on the tracks and that for some this may be an adverse effect.
302. In terms of the wider visual impact of the tree removal, the majority of the proposed tree removal will be undertaken on the west slope and consists of exotic conifers. The west slope as I understood it is generally obscured from view.
303. I agree with Mr Milne that the visual effects of the Flyride on Conical Hill are low (no more than minor). The structures themselves (start station, toilet and first pole) are relatively modest in scale and have been positioned, designed and coloured to nestle into the surrounding environment. They will not dominate the area or impede views. I also agree that the adverse effects on naturalness are effectively confined to the area around the start station due to earthworks and the addition of built form. Again, these effects I consider are no more than minor. Aside from these features the Flyride traverses down the western side of the hill, away the primary walking tracks and views from the summit.

304. I accept that the Flyride will change the nature and character of the summit area itself to some degree and as Mr Milne said will likely result in a livelier summit experience than at present. As well as riders it would no doubt attract others to view the experience. There would however be a degree of separation between the start station and the Lookout which would ensure that from a viewing point sense the tranquillity of the views from the Lookout itself will largely be maintained.
305. Overall, with respect to the amenity and character of Conical Hill, I agree there will be a change in character and the broader aspect of tranquillity at the summit. To some people I accept this will represent a more than minor effect. However, beyond the summit my view is the impact of the Flyride on the walking track and recreational value of the wider Conical Hill area will be less than minor, with perhaps the only noticeable effect being the occasional scream or yelp being able to be heard. I also accept that the activity proposed being a recreational activity in a recreation reserve is not necessarily at odds with this environment.
306. Finally, I acknowledge that the proposed revegetation has the potential to contribute to positive effects by improving the naturalness and ecological quality of the site.

Public Access

307. Increased public access and an associated impact on privacy was a particular concern for Mr Martin due to the location of a Council property adjoining his which enables access to the Council Hill track. Ms Barker suggested there would be a significant number of additional people walking past his property using the Acheron Heights access to the reserve thus compromising his privacy. She considered the proposed 'wayfinding plan' condition provided no assurance or certainty to residents and questioned why it could not be stipulated now.
308. Mr Smith on the other hand said he did not expect pedestrian volumes through the Acheron Heights access to increase significantly but noted that this could be reinforced through wayfinding involving very clear signage and recommended parking areas. Mr Walton considered there would be little total noise increase expected from the use of this access.
309. There was no clear indication as to the amount of increased use the Acheron Heights access would have, and I accept this is likely to be difficult to quantify. I tend to agree

with Mr Smith however that most Flyride customers would tend to utilise the main entrance from Conical Hill Road as this is a more direct route from town.

310. The reality in this situation is there is an access in this location (irrespective of its status) and people whether they are associated with the Flyride or not will utilise it if they perceive it as being convenient. Having said that I suspect many visitors to Hanmer would be unaware of its existence.
311. I note in response to Ms Barker's concerns that the conditions now put forward propose that the wayfinding plan (referred to above) be prepared and submitted to the Council for certification prior to the Flyride commencing and that any signage required in accordance with that certification is also to be installed prior to commencement.
312. In my opinion access of Acheron Heights associated specifically with the Flyride is unlikely to create any worse effects than the current situation. Indeed, having a wayfinding plan associated with this application put in place might well improve the situation across the board. Notwithstanding this, the broader issue of pedestrian access into the Conical Hill Reserve via 34 Acheron Heights is a matter beyond this hearing process and is not something I can deliver a decision on.

Horses on Lucas Lane Track

313. In relation to the potential noise and movement effects on horses on the Lucas Lane track I was advised in the right of reply that the dense vegetation between the Flyride and the track was not able to be harvested by Matariki as most of it was in the Conical Hill Reserve and therefore it will continue to provide visual blockage. On that basis and having walked this track I consider it unlikely riders and horses will be able to visibly see the Flyride which will eliminate the concerns around sudden movements frightening horses.
314. In terms of the noise, I accept any shouts and screams associated with the Flyride are likely to be heard by users of Lucas Lane, including horses, although the level of noise will likely be low. Mr Broerse's view was that horses were unlikely to perceive such shouts and screams to be a threat due to distance from the track and the density of vegetation, however it was considered signage alerting horse riders to the Flyride should be put in place.

315. I accept Mr Broerse's conclusions and also acknowledge that there are others actually using the track including walkers and mountain bikers who might also pose a risk of frightening a horse due to their actions. It would therefore be incorrect in my opinion to single out the Flyride operation, particularly given its distance away and the vegetative screening, as being an activity, which causes a greater risk of endangering horses and their riders. I accept however that signage indicating the presence of the Flyride would be of some value.

316. In terms of any alternative horse track options, those negotiations sit outside this hearing process.

Heritage

317. Mr Cleary raised the issue of the effects on heritage values and submitted that these had not been addressed by the Application. As I understand from Ms Bewley and Ms Appleyard in the right of reply the only historic heritage relates to the Lookout building and a rock plaque. Conical Hill itself is not a listed heritage feature. I do not consider either the Lookout building or the rock plaque are affected by the Flyride proposal and therefore I do not consider I need to look any further into this matter.

Property Devaluation

318. As set out by Ms Bewley the potential effects of the proposal on property values are not something I can take into account. This matter has been addressed by case law on various occasions with the determination being that a change in property values may be a symptom of actual or perceived amenity effects and the Court has generally concluded that taking into account any effects on property values is tantamount to double counting.

Fire Risk

319. A condition of consent has been proposed requiring a Fire Emergency Operations Procedure to be prepared in consultation with FENZ and a copy provided to the Council prior to the activity commencing on the site. I understand FENZ is comfortable with this condition and on that basis, I consider the matter of fire risk has been appropriately addressed.

Positive Effects

320. I acknowledge that the proposal would have a number of positive effects which include:

- Additional employment - 23 new jobs was the figure indicated.
- Increased visitor numbers to Hanmer resulting in increased business.
- A diversification in Hanmer's recreation/tourism offer.
- Increased native planting and pest control.
- Enhanced biodiversity and in particular noting that Dr Lettink said securing one or more covenant(s) to protect rough gecko habitat on private land would be a significant conservation outcome, particularly if the site(s) was managed in a way that allowed rough geckos to increase in abundance and/or distribution.

321. While I accept Mr Cleary's submission that no independent economic evidence had been provided as to the Flyride's economic benefits to the local economy, I consider it would be wrong of me to determine that there were no benefits. Mr Abbot is an experienced operator of the Hanmer Springs Thermal Pools & Spa and his conclusion was that the proposal "... is expected to inject \$4m into the local economy in its first five years. Whether or not that is the case, I consider it is safe for me to conclude that there would be benefits to the local economy. In this context I also understand that the application to the Provincial Growth Fund required a business case to be provided. I very much doubt such an application would have been granted without some clear understanding of the economic benefits the proposal would derive.

Overall Conclusion on Effects

322. Overall, I consider that there are some effects that reach the more than minor threshold being the tranquillity of the hilltop lookout area and visibility of the pole 7 and stop station, albeit in the case of the latter this is a temporary situation as screening planting establishes. In terms of other effects, I have assessed these as minor or less than minor and I note that many are able to be mitigated or addressed via proposed conditions.

323. I consider that there will be a number of positive effects including increased employment, increased business, increased tourism offering and improved landscaping. However, in my view the enhanced biodiversity proposed on Conical Hill and biodiversity compensation via a QEII covenant to protect rough gecko habitat are significant conservation (and positive) outcomes, which are now tied to the Flyride proposal and would be very unlikely to occur without it.
324. The RMA does not anticipate that proposals have no, or even minimal, effects. In my opinion the adverse effects generated by the Flyride proposal are able to be avoided, remedied or mitigated to acceptable levels, while the positive effects have now assumed some significance.
325. Finally, I note that if there were to be unanticipated effects, the conditions of consent can be reviewed pursuant to the proposed s128 condition.

Relevant Provisions

Hurunui District Plan

326. Objectives and policies of the District Plan considered relevant to the proposal were detailed by Ms Bewley, Ms Whyte, Ms Barker and in the right of reply. As a result, I do not propose to repeat them all in full here.
327. The initial provisions of Chapter 4 – Settlements, addresses land development and amenity values within settlements and generally look to protect and enhance any special character and environmental qualities of those settlements. In general, I accept that the Flyride proposal will maintain the alpine character of Hanmer Springs in terms of the design of structures associated with it. There are however two particular policies which I have addressed below.
328. Policy 4.6 addresses noise emissions and traffic generation and seeks that they are controlled to levels appropriate to the zone. I consider both these matters have now been appropriately addressed and while there might be some tension here in terms of the noise effects on the tranquillity of the hilltop lookout area, I do not consider the proposal overall reaches a level that could be said to be inconsistent with this policy.
329. Policy 4.17 is also of particular note as it looks to ensure any business development adjoining residential areas is designed and sited to protect the privacy, amenity values and outlook of residential areas. In this case I consider there is a degree of

inconsistency with this provision in that the privacy and outlook for residential properties at the top of Oregon Heights will be affected to some degree by the proximity to Pole 7 and the stop station. However, the impact of this will be temporary as the proposed planting regime is established and I also note that the present outlook in this direction for these properties, as referred to by Mr Milne, is already somewhat degraded and weed infested.

330. Finally, I do not consider Policy 4.1(iv), referred to by Ms Barker, is relevant. In my view it is a zoning policy.
331. In terms of the open space policies only Policy 4.20 has any relevance to the proposal in my opinion. The policy seeks to provide for open space zones to meet recreational requirements within settlements, which maintain and enhance amenity values and provide connectivity and public access. The policy is couched in way that relates to the provision of open space zones rather than addressing the effects of activity establishing within an open space zone. I am therefore reluctant to place a great deal of weight on it. Nevertheless, I have considered whether the proposed Flyride maintains and enhances amenity values and provides connectivity and public access. In terms of the former, as I have already indicated, there will be some changes to, and potential loss of, amenity values associated with the Conical Hill lookout area, however this is somewhat balanced by the enhanced landscaping that would occur. As for the provision of connectivity and public access I do not consider the proposal offends those aspects of the policy.
332. I have reviewed the specific Hanmer Springs objective and policies and do not consider the Flyride proposal, specifically the building designs, is inconsistent with them. In this context I note that the provisions of Plan Change 5 are now operative and I am required to consider those. The new objective and policies are directly related to buildings and their design rather than boarder character and amenity issues and are linked to the Hanmer Springs design standards. Those provisions assessed by the planners previously no longer exist.
333. The transport provisions promote safe and efficient transport outcomes and require on-site parking to provide for the needs of each activity. In terms of the safety and efficiency of the road network, I am satisfied that this will be maintained. On the matter of on-site parking, clearly this would not been provided.
334. In terms of the on-street parking provision (Policy 8.5), Ms Whyte addressed this in some detail. She said not providing on-site carparking was not sufficient for a

proposal to be inconsistent with this policy. She said important to the consideration of the policy was what were the needs of each activity and how can they be provided for while maintaining the safety and efficiency of the road network. In this context she noted that no road safety or efficiency concerns had been identified.

335. Mr Whyte noted that the site was not accessible by vehicles and wheeled vehicles were not permitted by the Reserve Management Plan. Therefore, the only way to access the start and stop station and any part of the ride was on foot, as a pedestrian. She said this was consistent with the current use of the reserve which is also not accessible by vehicles. She said the pedestrian focussed access to the reserve and the proposed activity show that it is not necessary for on-site vehicle access, manoeuvring or parking to be provided to the activity. Therefore, in the context of Policy 8.5 she said there is not a need for on-site vehicle access, carparking and manoeuvring areas for this activity.
336. I acknowledge the sentiments of Ms Whyte's comments and accept that dedicated parking was never an option on the site of the proposed Flyride itself. In that regard there is an element of difference in these circumstances from other situations. Essentially there is no realistic ability to provide on-site parking as required by the policy. Further, the policy does not contain a default position in relation to off-site parking. In circumstances where I am satisfied that the on-street parking situation is able to be monitored and addressed if necessary and that safety and efficiency of the road network will not be compromised by any on-street parking that occurs I consider that the proposal does not offend Policy 8.5.
337. Chapter 13 addresses ecosystems and indigenous biodiversity and having looked at the relevant objective and policies I consider the proposal will accord with those provisions. In particular it will provide increased protection for an area of significant indigenous habitat; use the QEII covenant mechanism to provide greater protection and enhancement for the threatened rough gecko; help in controlling pests; and increase native planting.
338. Chapter 15 contains natural hazard objectives and policies, which seek to avoid or mitigate the adverse effects on natural hazards and to avoid development if the risk is unacceptable. I consider the Flyride proposal to be consistent with these provisions.

339. Overall, I conclude that the proposal is not contrary to the relevant objectives and policies and while there is some degree of inconsistency with specific policies, I am satisfied that overall, the Flyride proposal is not inconsistent with the District Plan.

Canterbury Regional Policy Statement

340. Chapter 9 of the CRPS addresses ecosystems and indigenous biodiversity. Having reviewed those provisions I consider they have been incorporated into Chapter 13 of the District Plan, which I have covered above and therefore there is no need for me to consider them any further.

Other Matters

Precedent

341. Given that the proposal is for a discretionary activity, I have given consideration as to whether matters of precedent and plan integrity could arise. In short, I do not consider these matters would arise from a grant of consent in this instance given the unusual nature of the application which I consider is unlikely to be replicated.

Reserves Act and Reserves Management Plan

342. Having considered the Reserves Management Plan (RMP) I agree with Mr Greenaway that a development of this nature is not specifically contemplated by the RMP, nor does it rule it out. Indeed, the Conical Hill section of the RMP contains a heading 'Future development potential' under which it indicates that a number of factors including the iconic nature of the reserve and the walking experience, must be taken into account when considering any development proposals. I consider this has been appropriately addressed.
343. Policy 5: Commercial Activities of the RMP requires in this case a license to be obtained from the Council. I also note in relation to other aspects of Policy 5 that the Flyride would be considered to be of a 'recreational nature' and would be considered to benefit the community in terms of providing an alternative recreational attraction and additional employment/business.
344. Turning to the Reserves Act, I agree with Mr Greenaway that it does not provide any direct impediment, and that broadly, it can be considered an appropriate development for a recreation reserve. I also accept that generally the Flyride proposal will sustain and enhance recreation values on Conical Hill. There are a

number of enhancements in terms of native planting, biodiversity and track maintenance that will stem from the proposal. In reaching this conclusion I acknowledge that there is some loss tranquillity of the hilltop lookout area, although this does not extend to the outlook and views of the Hanmer Basin.

Overall Conclusion

345. Based on the evidence before me I have concluded that overall, the majority of actual and potential effects on the environment associated with the proposed Flyride will be no more than minor.
346. While I accept there will be some adverse effects associated with proposal, some of which will be mitigated in time, in my opinion the key matters have been adequately addressed and/or mitigated through conditions. I also consider there are significant positive effects stemming from the proposal, particularly in the form of biodiversity enhancement and compensation which weigh in favour of it. Further, I do not consider the Flyride proposal is contrary to the relevant objectives and policies of the District Plan and while there are some inconsistencies with specific policies, I am satisfied that the Flyride proposal is not inconsistent with the District Plan provisions overall. In this context I consider the proposal achieves the requirements of Part II of the Act.
347. Finally, I want to acknowledge that this is an extensive decision in which I have tried to convey the views of all parties involved as succinctly as possible. I would like to thank all those involved in the way they presented and participated in the hearing process.

Conditions

348. I have reviewed the conditions put forward by the Council and subsequently by the Applicant. While I am generally satisfied that they address all the matters concerned I have, as previously signalled, made some changes to the landscape provisions to address the timing of planting adjacent to the residential boundary to, in my view, better address the visual and privacy effects.

DECISION

349. For the foregoing reasons, land use consent RC210098, to install and operate a gravity-based recreation activity (Flyride) on the western face of the Conical Hill Reserve, Hanmer is **approved** pursuant to sections 104, and 104B of the Act subject to the conditions set out in Appendix 1 below.



DATED THIS 18TH DAY OF FEBRUARY 2022

DEAN CHRYSTAL

COMMISSIONER

Appendix 1

CONDITIONS

General

1. The activity shall proceed in general accordance with the plans and details submitted with the application and referenced as RC210098 in Council records.
2. The activity shall be located in accordance with the Overall Development Plan on sheet 11 of the Graphic Attachment to Landscape and Visual Assessment Addendum, with the exception that towers T1-T7 may be relocated within ten metres of the location shown. The final location of each structure shall be subject to a detailed on-site geotechnical assessment undertaken by a suitably qualified and experienced person, which shall be provided to and certified by the Council before any physical construction works can proceed.
3. The hours of operation shall be limited to seven days a week:
 - 10am-6pm, except in the months of December to February, where the hours shall be limited to 9am-7pm

Traffic

4. Monitoring of on street parking shall be undertaken by an independent and suitably qualified transportation engineer prior to the activity commencing (baseline monitoring) and thereafter three times annually for two years following commencement of public use of the activity (commencement monitoring). Monitoring shall:
 - (a) Include the following locations:
 - (i) Oregon Heights
 - (ii) Conical Hill Road (north of Chalet Crescent)
 - (iii) Thomas Hanmer Drive (the first 120 metres measured from the intersection with Conical Hill Road)
 - (iv) Acheron Heights
 - (b) All monitoring shall be undertaken over a period of four hours between 10am and 2pm on a fine weather day.
 - (c) All monitoring shall not be undertaken on a day or time where a special event is occurring within the Hanmer Springs township.
 - (d) Baseline monitoring is to be undertaken within a school holiday weekend or public holiday weekend.
 - (e) Commencement monitoring is to be undertaken at a time when the activity is operating within the following periods:

- (i) One school term-time week during the period of September – November (inclusive). The monitoring period is to include one weekday and one weekend day.
 - (ii) One school holiday week during the period of December – February (inclusive). The monitoring period is to include one weekday and one weekend day.
 - (iii) One public holiday weekend during the period of September – February (inclusive).
- 5. Results of the baseline and commencement monitoring undertaken in condition 4 shall be provided to the Hurunui District Council within 20 working days of each monitoring period being completed. The monitoring shall be provided in the form of a report which:
 - (a) Presents the baseline monitoring data in the form of on-street parking space occupancy levels and outlines any changes in demand of the latest monitoring, compared to the baseline monitoring for the equivalent time.
 - (b) Confirms that there were no special events occurring at the time of the monitoring being undertaken.
 - (c) Reports any changes in the on-street parking supply that have occurred since the previous monitoring and confirm the on-street parking supply at the time of the latest monitoring.
 - (d) Presents rider booking data on the activity for the same time period as the monitoring data. This data shall include actual rider numbers, and how many of the bookings during the monitoring period were for multiple-person rides.
 - (e) Identifies the likely level of on-street parking demand to have been generated by the activity during the monitoring period.
 - (f) Includes any observations of illegal parking within the monitoring area.
- 6. If in the second year of commencement monitoring undertaken under condition 4, an on-street parking occupancy of 75% or more on aggregate across Oregon Heights, Conical Hill Road and Thomas Hanmer Drive occurs then the Hurunui District Council may initiate a review in accordance with condition 29.
- 7. If a review in accordance with condition 29 is initiated due to the on-street parking occupancy of Oregon Heights, Conical Hill Road and Thomas Hanmer Drive, commencement monitoring of these areas shall continue for a minimum of 12 months following the completion of any review. Commencement monitoring shall cease if on-street parking occupancy of 75% or more on aggregate across Oregon Heights, Conical Hill Road and Thomas Hanmer Drive does not occur within the 12 month monitoring period.
- 8. If in the second year of commencement monitoring undertaken under condition 4, an on-street parking occupancy of 75% or more along Acheron Heights occurs, then the Hurunui District Council may initiate a review in accordance with condition 29.

9. If a review in accordance with condition 29 is initiated due to the on-street parking occupancy of Acheron Heights, commencement monitoring shall continue for a minimum of 12 months following the completion of the review. Commencement monitoring shall cease if on-street parking occupancy of 75% or more along Acheron Heights does not occur within the 12 month monitoring period.
10. If in the second year of monitoring undertaken under condition 4, an on-street parking occupancy of 50% or more along the first 120 metres of Thomas Hanmer Drive when measured from the intersection with Conical Hill Road occurs, a pedestrian crossing of Conical Hill Road in the vicinity of Thomas Hanmer Drive shall be installed. The specific location, form and design of the crossing shall be agreed and approved by Hurunui District Council.
11. A wayfinding plan shall be prepared and submitted to Council for certification prior to the activity commencing. Any signage required to be in accordance with the certified wayfinding plan shall be installed prior to the activity commencing.

Noise

12. Noise arising from construction activities shall comply with the noise standards contained in NZS 6803:1999 "Acoustics – Construction Noise."
13. Once the activity commences, the following noise limits shall apply:
 - (a) Noise arising from people riding on the Flyride shall not exceed 45 dB LAFmax at any point within any residentially zoned site.
 - (b) All other noise arising from the operation of activities authorised by this Consent on the site shall comply with the following noise limits at or outside the boundary of the site:
 - (i) 55 dB LAeq (1 hr), 7am – 7pm daily
 - (ii) 45 dB LAeq (1 hr), 7pm – 7am daily
 - (iii) 75 dB LAFmax all days between 10pm and 7am
 - (c) Noise shall be measured and assessed in accordance with NZS 6801:2008 "Acoustics – Measurement of environmental sound" and NZS 6802:2008 "Acoustics – Environmental noise"
14. Prior to the commencement of public use of the activity, a draft "Noise Compliance Measurement & Assessment Plan" (NCMAP), prepared by a suitably qualified and experienced noise expert, shall be submitted to the Hurunui District Council for certification. The NCMAP shall include:
 - (a) A description of the commissioning investigations and measurements that have been undertaken to verify the noise modelling and assumptions relating to noise arising from people riding on the Flyride, and any resulting specific recommendations relating to ride controls.
 - (b) Recommendations relating to appropriate processes for monitoring noise levels once the activity commences such as:

- (i) Descriptions of methods and procedures for the measurement of LAFmax sound levels at known distances in close proximity to identified Flyride noise sources, and the minimum number of readings to be taken.
 - (ii) Methods for calculating adjustments to these measured LAFmax levels to predict representative LAFmax noise levels expected at residentially zoned sites, including reference to relevant acoustic Standards or guidelines on which the calculations are based.
 - (iii) If the Hurunui District Council fails to certify the NCMAP within 20 working days of receiving the draft NCMAP, or within 10 working days of receiving any requested amendments to the draft NCMAP, the NCMAP can be assumed to be certified.
15. Noise monitoring shall be undertaken within 30 working days of the commencement of public use of the activity, in accordance with the certified NCMAP. A compliance assessment report shall be provided to the Hurunui District Council within 20 working days of the monitoring being undertaken.
16. If the noise monitoring in condition 15 is not undertaken on a school holiday or public holiday weekend (or time of similar peak usage), then further noise monitoring shall be undertaken at the earliest appropriate peak time after the activity has commenced. A compliance assessment report shall be provided to the Hurunui District Council within 20 working days of the monitoring being undertaken.

Herpetofauna

17. Prior to any physical construction works occurring on site the Consent Holder will provide the Hurunui District Council with confirmation that a Wildlife Act permit has been obtained from the Department of Conservation.
18. All works on site must comply with the Wildlife Act permit.
19. An off-site QEII conservation covenant (with management plan) over rough gecko habitat shall be created and registered as soon as reasonably practicable, but no later than 2 years from the exercise of this consent. Confirmation that the covenant has been registered shall be provided to Hurunui District Council within 20 working days of the covenant being registered.

Kārearea/falcon

20. The Consent Holder shall:
- (a) Prior to any physical construction works occurring on site, the Consent Holder shall provide the Hurunui District Council with confirmation that any contracts for construction activities include a requirement to adhere to best practice forestry guidelines; namely that a pre-works walk-through of the footprint is required to be carried out between August to March, no more than 3-days ahead of works, with the purpose of identifying the location of breeding behaviour and scrapes/nests such that:

- (i) If dive-bombing is observed, or eggs found, or small white fluffy chicks/large grey chicks are found, planned works must withdraw 200 m for 75, 45, 20 days respectively.
 - (ii) If feathered chicks that cannot fly are found, planned works must withdraw 100 m for 15 days.
 - (iii) If young falcon that can fly are found, works can continue as planned.
- (b) If the location of the scrape/nest cannot be identified, then any works within 200 m of the location where aggressive breeding/dive-bombing was observed must cease until chicks have fledged (75 days).
 - (c) If any works are required to cease under condition 20, this shall be reported to Hurunui District Council within 14 days of the works ceasing.
21. Following commencement of the activity, the Consent Holder shall report any evidence of near misses, injury and/or mortality of kārearea/falcon through interaction with infrastructure or riders associated with the activity to the Hurunui District Council and the Department of Conservation. In the event that collisions occur at a frequency of more than 1 every 2 years then the Consent Holder shall, as soon as practicable provide a report to the Hurunui District Council detailing a suitable monitoring and management regime to be implemented to address any net negative impact at the local population level.

Fire risk

22. A Fire Emergency Operations Procedure shall be drafted in consultation with Fire and Emergency New Zealand and a copy provided to the Council prior to the activity commencing on the site.

Landscaping

23. Any tree planting, aftercare, maintenance of mature trees and tree felling operations on site shall be carried out or supervised on site by competent/qualified operators in accordance with established arboricultural/horticultural work practices and industry standards.
24. Prior to any physical construction works occurring on site a landscaping plan identifying the existing and proposed landscaping between T7 and the stop station and the site boundary to the south shall be submitted by the Consent Holder to Hurunui District Council and approved by Hurunui District Council within 20 working days of receiving the landscaping plan. The landscaping plan should include a pest and weed maintenance strategy setting out how the landscape plantings are to be maintained and monitored.
25. Landscaping shall be established in accordance with the Graphic Attachment to Landscape and Visual Assessment Addendum prepared by Rough & Milne Landscape Architects, in particular, the Preliminary Revegetation Strategy, (sheet 31), or as otherwise approved by Council.

26. The planting required adjacent to the Oregon Heights residential boundary under **conditions 24 and 25** shall be implemented, if not prior to, within the first planting season (1st April to 30th August) following the approval of the landscaping plan. All remaining planting required under **conditions 24 and 25** shall be implemented, if not prior to, within the first planting season (1st April to 30th August) following completion of construction.
27. All planting required by **conditions 24 and 25** shall be maintained with any diseased, damaged or dying plants to be replaced as soon as reasonably practicable upon failure, with plants of a similar species.

Signage

28. Prior to the commencement of the activity, subject to the agreement of the landowner, signage alerting horse riders to the Flyride activity shall be prepared in consultation with the Hanmer Springs Horse Riders Incorporated and installed on the Lucas Lane Track. In the event that landowner agreement is not obtained the consent holder shall advise the consent authority that the signage cannot be installed.

Review condition

29. Pursuant to section 128 of the Resource Management Act 1991, the Hurunui District Council may, at any time, serve notice on the consent holder of its intention to review the conditions of the consent in order to:
 - (a) respond to any adverse effect on the environment in relation to on-street car parking or noise which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage;
 - (b) require the consent holder to adopt the best practicable option to mitigate any adverse effect on the environment; and ensure that the conditions are effective and appropriate in managing the effects of the activities authorised by this consent